

1 David W. Affeld, State Bar No. 123922
Damion Robinson, State Bar No. 262573
2 Affeld Grivakes LLP
2049 Century Park East, Ste. 2460
3 Los Angeles, CA 90067
Telephone: (310) 979-8700
4

5 Attorneys for Plaintiff
Michael Zeleny
6
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 MICHAEL ZELENY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, *et al.*,

15 Defendants.
16
17
18
19

Case No. CV 17-7357 RS

Assigned to:

The Honorable Richard G. Seeborg

Discovery Matters:

The Honorable Thomas S. Hixson

**DECLARATION OF DAMION
ROBINSON IN SUPPORT OF
PLAINTIFF MICHAEL ZELENY'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AGAINST THE CITY OF
MENLO PARK AND POLICE CHIEF
DAVE BERTINI**

Date: February 25, 2021

Time: 1:30 p.m.

Courtroom: 3, 17th Floor

Action Filed: December 28, 2017

Trial Date: TBD
23
24
25
26
27
28

1 I, Damion Robinson, declare:

2 1. I and my law firm are counsel of record to Plaintiff Michael Zeleny (“Zeleny”). I
3 have personal knowledge of these facts or knowledge based on a review of the records and files of
4 my firm regularly maintained in the ordinary course of business. I could testify competently to these
5 facts if called upon to do so.

6 2. Attached hereto and marked as **Exhibit A**, is a true and correct copy of the Expert
7 Declaration of David Hardy.

8 3. Attached hereto and marked as **Exhibit B**, is a true and correct copy of the Expert
9 Declaration of Greg Block.

10 4. Attached hereto and marked as **Exhibit C**, is a true and correct copy of the Expert
11 Declaration of Robert Latham Brown.

12 5. Attached hereto and marked as **Exhibit D**, is a true and correct copy of the Expert
13 Declaration of Michael Tristano.

14 6. Attached hereto as **Exhibit E** is a true copy of Volume I of the transcript of the
15 deposition of Chief Dave Bertini (“Bertini”) testifying in his individual capacity and as the Rule
16 30(b)(6) designee of the City of Menlo Park (the “City”). For completeness, Bertini’s deposition
17 transcript is submitted in full with the relevant excerpts highlighted and noted in the moving papers.

18 7. Attached hereto as **Exhibit F** is a true copy of Volume II of the transcript of the
19 deposition of Bertini, individually and as the Rule 30(b)(6) designee of the City.

20 8. Attached hereto as **Exhibit G** is true copy of excerpts of the transcript of the
21 deposition of Matt Milde taken in this matter.

22 9. Attached as **Exhibit H** is a true copy of a series of police reports and “activity logs”
23 produced in this matter by the City of Menlo Park (the “City”). As noted, certain of these reports
24 were marked as Exhibits 46, 47, 48, and 50 to Volume I of Bertini’s deposition.

25 10. Attached as **Exhibit I** is a true copy of an email exchange dated April 27, 2011
26 produced by the City in this matter.

27 11. Attached as **Exhibit J** is a true copy of an email exchange dated February 9, 2012
28 produced by the City in this matter and marked as Exhibit 54 to Volume I of Bertini’s deposition.

1 12. Attached as **Exhibit K** is a true copy of an email produced by the City in this matter
2 attaching Management Staff Meeting Minutes dated April 3, 2012. This document was marked as
3 Exhibit 52 to Volume I of Bertini's deposition.

4 13. Attached as **Exhibit L** is a true copy of an email exchange dated October 24, 2011,
5 produced by the City in this matter, and marked as Exhibit 256 to Volume II of Bertini's deposition.

6 14. Attached as **Exhibit M** is a true copy of a policy manual section entitled "First
7 Amendment Assemblies," produced by the City in this matter and marked as Exhibit 43 to Volume I
8 of Bertini's deposition.

9 15. Attached as **Exhibit O** is a true copy of a police report dated May 24, 2012 produced
10 by the City in this matter, and designated as Exhibit 260 to Volume II of Bertini's deposition.

11 16. Attached as **Exhibit P** is a true copy of a police report dated February 9-10, 2012,
12 produced by the City in this matter and designated as Exhibit 49 to Volume I of Bertini's deposition.

13 17. Attached as **Exhibit Q** is a true copy of an email exchange dated December 7, 2017,
14 produced by the City in this matter, and marked as Exhibit 31 to Volume I of Bertini's deposition.

15 18. Attached as **Exhibits R, S, and T**, respectively, are true copies of the City's (a)
16 Special Event Permit Application FAQs, (b) Special Event Permit Flow Chart; and (c) Special Event
17 website in effect at the time of Zeleny's applications. All of these documents were produced by the
18 City in this matter and they were marked as Exhibits 33, 30, and 34, respectively, to Volume I of
19 Bertini's deposition.

20 19. Attached as **Exhibit U** is a true copy of a document entitled Film Production in
21 Menlo Park, which was produced by the City in this matter and marked as Exhibit 35 to Volume I of
22 Bertini's deposition.

23 20. Attached as **Exhibit V** is a true copy of an email dated April 15, 2016, produced by
24 the City in this matter, and marked as Exhibit 267 to Volume II of Bertini's deposition.

25 21. Attached as **Exhibit W** is a true copy of an email from Bertini dated July 21, 2015,
26 produced by the City in this matter, and marked as Exhibit 262 to Volume II of Bertini's deposition.

27 22. Attached as **Exhibit X** is a true copy of an email attaching Management Staff
28 Meeting Notes dated August 4, 2015, produced by the City in this matter.

23. Attached as **Exhibit Y** is a true copy of film permit produced by the City in this matter. This document was marked as Exhibit 74 in the deposition of Nicholas Flegel and subsequently discussed in Volume II of Bertini's deposition at pages 490-91.

24. Attached as **Exhibit Z** is a true copy of an email exchange dated June 20, 2017, produced by the City in this matter, and marked as Exhibit 270 to Volume II of Bertini's deposition.

25. Attached hereto as **Exhibit AA** is a true copy of an email exchange dated September 19, 2017, produced by the City in this matter, and marked as Exhibit 65 to the deposition of Nicholas Flegel. The document was also addressed in Volume II of Bertini's deposition at pages 496-97.

26. Attached hereto as **Exhibit BB** is a true copy of an email exchange dated September 20, 2017 and produced by the City in this matter.

27. Attached hereto as **Exhibit CC** is a true copy of an email dated August 29, 2017, attaching a PowerPoint Presentation, produced by the City in this matter, and marked as Exhibit 271 to Volume II of Bertini's deposition.

28. Attached hereto as **Exhibit DD** is a true and correct copy of Defendant Attorney General Xavier Becerra's Second Amended Responses to Michael Zeleny's Interrogatories, Set Two.

29. Attached hereto as **Exhibit EE** is a true and correct copy of Defendant Attorney General Xavier Becerra's Second Amended Responses to Michael Zeleny's First Set of Interrogatories.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed January 21, 2021 at Los Angeles, California

s/ Damion Robinson
Damion Robinson

Exhibit *A*

1 David W. Affeld, State Bar No. 123922
Brian R. England, State Bar No. 211355
2 Damion Robinson, State Bar No. 262573
Affeld Grivakes LLP
3 2049 Century Park East, Ste. 2460
Los Angeles, CA 90067
4 Telephone: (310) 979-8700

5 Attorneys for Plaintiff
6 Michael Zeleny
7
8

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL ZELENY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, *et al.*,

15 Defendants.
16
17
18

Case No. CV 17-7357 RS

Assigned to:
The Honorable Richard G. Seeborg

**EXPERT DECLARATION OF
DAVID HARDY**

Action Filed: December 28, 2017
Trial Date: None Set
19
20
21
22
23
24
25
26
27
28

1 I, David Hardy, declare as follows:

2 1. I am an attorney in private practice. I am admitted to the bars of the U.S. Supreme
3 Court, the Second, Fifth, and Ninth Circuits, and the District Courts of Arizona, Colorado, and
4 the District of Columbia.

5 2. I have been researching Second Amendment issues for nearly 50 years, including
6 much research at the Library of Congress. I published my first law review article on the subject
7 47 years ago, while I was still in law school. I have published a book and 19 law review articles
8 on the American right to arms and on firearms legislation. My writings have twice been cited by
9 the United States Supreme Court, and by eleven U.S. Circuit Courts of Appeals. I have testified
10 before the Judiciary Committee of the U.S. Senate, and several other legislative committees.

11 3. I have been asked to give an opinion on: (i) how a ban on the open carry of
12 firearms comports with the history, text, and tradition of the Second Amendment; and (ii) on the
13 history and tradition of carrying firearms while participating in peaceful protests.

14 4. For my work on this case I am being compensated at \$150 per hour. I have
15 received and will receive no other form of compensation in relation to this case. My
16 compensation is not dependent on the outcome of this case.

17 5. The materials I have considered in reaching my opinion are primarily my personal
18 files on the subject of the right to arms, which span nine shelf-feet of documents, reflecting 46
19 years of research. I have also reviewed the California Attorney General's Responses to Plaintiff
20 Michael Zeleny's Interrogatories, Sets One and Two.

21 **Pre-Independence English Common Law**

22 6. A proper understanding of the Second Amendment must start with the Statute of
23 Northampton, enacted in 1328. In translation from the original "Law French," it forbade subjects
24 to "go or ride armed by night of day, in fairs, markets, nor in the presence of the Justices, nor in
25 no part elsewhere." 2 Edw. II, ch. 3.

26 7. This presents a paradox: at the time, a sword and dagger was part of every
27 gentleman's formal attire, tournaments were popular outdoor sports, and the Statute did not
28 repeal the various statutes and royal proclamations that required subjects to practice with the

1 longbow, and indeed outlawed all sports save archery. 35 years later, Edward III ordered his
2 sheriffs “you shall cause to be proclaimed in the shire that, on festival days when he has holiday,
3 shall learn himself in the art of archery, and use for his games bows and arrows, or crossbows
4 and bolts, forbidding all and single, on our orders, to meddle or toy in any way with these games
5 of throwing stones, wood or iron, playing handball, football, “stick ball” or hockey....” 4
6 English Historical Documents 1327-1485, at 1182. Later, Henry VIII ordered all able-bodied
7 subjects under 60 years of age to “use and exercise shooting in longbows.” To that end, every
8 town was commanded to establish “butts,” target areas, “and that the inhabitants and dwellers in
9 every one of them be compelled to make and continue such butts and exercise themselves in the
10 longbow in shooting at them on holidays and other times convenient.” 3 Hen. VIII, c. 3) (1512)
11 (spelling modernized). These measures did not repeal the Statute of Northampton or reflect any
12 consideration that carrying a longbow and arrows to the shooting range would be going “armed”
13 in public.

14 8. Historians are exploring this paradox. One possible explanation is that in 1328, in
15 Law French or the English of the translator, “armed” did not mean carrying weapons, but
16 wearing armor. Carrying a dagger or a sword was customary: wearing armor meant the wearer
17 was looking for trouble. This is borne out by the penalty clause of the statute: “upon pain to
18 forfeit their armour to the King, and their bodies to prison at the King's pleasure.” There is no
19 mention of forfeiting their weapons, only their armor. This reading is supported by some
20 Elizabethan Age usages I have found. For example, a 1560 translation of Machiavelli’s *The Art*
21 *of War*. In it, the author discusses the Dutch pikemen of his time, who carried pikes (long spears)
22 and a sword for close-in defense, but no armor. The book describes how they fared against the
23 armored Swiss pikemen: “The Duchemen (as a little before I saied unto you) as it were unarmed,
24 to defend themselves, have to offende [use offensively] the pike and the swearde [sword]....
25 They being unarmed, and having against thym an enemie, that is all armed.” Nicolo Machiavelli,
26 *the Arte of Warre* 67 (Edward Dacres, trans., 1560, reprinted 1905). That the Netherlanders
27 carried an 18-foot spear and a sword did not stop the English translator from describing them as
28 “unarmed.”

1 9. Whatever its original meaning, the Statute of Northampton was first construed by
2 King's Bench in 1687, 350 years after its enactment. *Sir John Knight's Case*, 87 Eng. Rep. 75,
3 90 Eng. Rep. 330. There are two reports on the decision. In one report, the court noted that the
4 statue was "almost gone in desuetudinem" (the civil, not common law, doctrine that an
5 unenforced statute lapses). The court ruled that carrying arms would come within the Statute if
6 "in malo animo." In the other report, the court is described as stating that the statue was meant
7 "to punish people who go armed to terrify the King's subjects." The court thus construed the
8 statute to prohibit only carrying weapons with the criminal intent to terrify others.

9 **The Framing of the Bill of Rights**

10 10. There is little to be drawn from this period; the Framers discussed the Bill of
11 Rights, but left no record as to concealed vs. open carry. One thing should be obvious, however.
12 When the Framers and the Framing Generation chose to guarantee a right to "bear" arms, they
13 could not have been ignorant of the fact that most arms were then borne in the open. Muskets
14 and rifles were too large to conceal (muskets commonly had overall lengths exceeding five feet).
15 Pistol likewise were large, and carried in saddle holsters. They were common, but if carried in
16 the pocket the ball tended to fall out of the downward-facing barrel. "Pocket pistols," with
17 screw-on barrels that solved this problem, were known (Jefferson owned one) but were rare and
18 expensive. Asked to image in his mind what he was protecting with the Second Amendment, an
19 American of the Framing generation would certainly have envisioned a person carrying in the
20 open.

21 **The Early American Experience**

22 11. The earliest American restrictions upon arms-bearing came in states of the then-
23 Southwest, and focused upon concealed carry. The view was that open carry was normal,
24 concealed carry the exception. One who carried openly and did not mind who saw his arm was
25 presumably not up to anything suspicious. One who carried concealed might be.

26 12. The first of these statutes was enacted in Kentucky in 1813. It forbade citizens to
27 "wear a pocket pistol, dirk, large knife, or sword in a cane, concealed as a weapon, unless when
28 travelling on a journey...." Nine years later, the enactment came before the state's highest court,

1 the Court of Appeals, which struck it down. *Bliss v. Commonwealth*, 12 Ky. 90 (1822). The
2 Court noted:

3 It was not, however, contended by the attorney for the
4 commonwealth, that it would be competent for the legislature, by
5 the enactment of any law, to prevent the citizens from bearing arms
6 either in defence of themselves or the state; but a distinction was
7 taken between a law prohibiting the exercise of the right, and a law
8 merely regulating the manner of exercising that right; and whilst the
9 former was admitted to be incompatible with the constitution, it was
10 insisted, that the latter is not so, and under that distinction, and by
11 assigning the act in question a place in the latter description of laws,
12 its consistency with the constitution was attempted to be
13 maintained.

14 That the provisions of the act in question do not import an entire
15 destruction of the right of the citizens to bear arms in defence of
16 themselves and the state, will not be controverted by the court; for
17 though the citizens are forbid wearing weapons concealed in the
18 manner described in the act, they may, nevertheless, bear arms in
19 any other admissible form. But to be in conflict with the
20 constitution, it is not essential that the act should contain a
21 prohibition against bearing arms in every possible form--it is
22 the *right* to bear arms in defence of the citizens and the state, that is
23 secured by the constitution, and whatever restrains the full and
24 complete exercise of that right, though not an entire destruction of
25 it, is forbidden by the explicit language of the constitution.

26 If, therefore, the act in question imposes any restraint on the right,
27 immaterial what appellation may be given to the act, whether it be
28 an act regulating the manner of bearing arms or any other, the
consequence, in reference to the constitution, is precisely the same,
and its collision with that instrument equally obvious.

And can there be entertained a reasonable doubt but the provisions
of the act import a restraint on the right of the citizens to bear arms?
The court apprehends not. The right existed at the adoption of the
constitution; it had then no limits short of the moral power of the
citizens to exercise it, and it in fact consisted in nothing else but in
the liberty of the citizens to bear arms. Diminish that liberty,
therefore, and you necessarily restrain the right; and such is the
diminution and restraint, which the act in question most
indisputably imports, by prohibiting the citizens wearing weapons
in a manner which was lawful to wear them when the constitution
was adopted. In truth, the right of the citizens to bear arms, has been
as directly assailed by the provisions of the act, as though they were
forbid carrying guns on their shoulders, swords in scabbards, or
when in conflict with an enemy, were not allowed the use of
bayonets; and if the act be consistent with the constitution, it cannot

1 be incompatible with that instrument for the legislature, by
2 successive enactments, to entirely cut off the exercise of the right of
3 the citizens to bear arms. For, in principle, there is no difference
4 between a law prohibiting the wearing concealed arms, and a law
5 forbidding the wearing such as are exposed; and if the former be
6 unconstitutional, the latter must be so likewise.

7 13. The Kentucky Court thus considered both open and concealed carry to be
8 constitutionally protected. The Court's ruling was overridden in 1850 by a constitutional
9 amendment, which expressly permitted the legislature to regulate the carrying of concealed
10 arms. Ky Const. of 1850, art. XIII, §25. That the amendment only abrogated the ruling as to
11 concealed carry is noteworthy; Americans of the time apparently felt nothing exceptional about a
12 ruling that held open carry was completely beyond the reach of a legislature.

13 14. Alabama next ruled upon the permissibility of bans on concealed carry, and
14 upheld its law, but at the same time made it clear that its rationale would not extend to a ban on
15 open carry. In *State v. Reid*, 1 Ala. 612 (1840), the Court took the position that a law which
16 prohibited concealed carry, while allowing open carry, constituted a regulation of the manner of
17 exercising the right to arms, rather than a deprivation of that right.

18 The constitution in declaring that, "Every citizen has the right to
19 bear arms in defence of himself and the State," has neither
20 expressly nor by implication, denied to the Legislature, the right to
21 enact laws in regard to the manner in which arms shall be borne.
22 The right guaranteed to the citizen, is not to bear arms upon all
23 occasions and in all places, but merely "in defence of himself and
24 the State." The terms in which this provision is phrased seems to us,
25 necessarily to leave with the Legislature the authority to adopt such
26 regulations of police, as may be dictated by the safety of the people
27 and the advancement of public morals. The statute of 1 Wm. and M.
28 while it declares the right of the subject, it refers to Parliament to
determine what arms shall be borne and how; while our constitution
being silent as to the action of the Legislature, does not divest it of a
power over the subject, which pertained to it independent of an
express grant.

We do not desire to be understood as maintaining, that in regulating
the manner of bearing arms, the authority of the Legislature has no
other limit than its own discretion. A statute which, under the
pretence of regulating, amounts to a destruction of the right, or
which requires arms to be so borne as to render them wholly useless
for the purpose of defence, would be clearly unconstitutional.

1 15. Louisiana banned concealed carry the same year that Kentucky did, punishing any
2 person found with “a concealed weapon, such as a dirk, dagger, knife, pistol, or any other deadly
3 weapon concealed in his bosom, coat, or any other place about him, that does not appear in full
4 view.” The statute came up for review in *State v. Chandler*, 5 La. App.489, 52 Am. Dec. 599
5 (1850). Chandler had been convicted of manslaughter, and appealed the Court’s refusal to give a
6 jury instruction stating that it was lawful to carry a weapon whether openly or concealed. The
7 Louisiana Court of Appeals upheld the refusal to so instruct, reasoning that:

8 This law became absolutely necessary to counteract a vicious state
9 of society, growing out of the habit of carrying concealed weapons,
10 and to prevent bloodshed and assassinations committed upon
11 unsuspecting persons. It interfered with no man's right to carry arms
12 (to use its words) “in full open view,” which places men upon an
13 equality. This is the right guaranteed by the Constitution of the
14 United States, and which is calculated to incite men to a manly and
noble defence of themselves, if necessary, and of their country,
without any tendency to secret advantages and unmanly
assassinations.

15 16. The Louisiana Court thus rejected the Kentucky Court’s position that any
16 limitation of the right to arms was unconstitutional: concealed carry could be banned so long as
17 open carry was allowed.

18 17. A third case, from Tennessee, involved a law that did ban open carrying
19 (“wearing”), but only of a few weapons—“any bowie knife, or Arkansas tooth-pick” or similar
20 knife. *Ayamette v. State*, 21 Tenn. 154 (1840) dealt with a challenge under the state constitution,
21 which guaranteed a right to arms “for the common defense.” The court used that qualifier to hold
22 that the guarantee only related to arms suitable for military or militia duty. The people, it argued,
23 “need not, for such a purpose, the use of those weapons which are usually employed in private
24 broils, and which are efficient only in the hands of the robber and the assassin. These weapons
25 would be useless in war. They could not be employed advantageously in the common defence of
26 the citizens.”

27 18. I thus conclude that at the time of the proposal and ratification of the Second
28 Amendment (1789-1791) and of the Fourteen Amendment (1866-1868), restrictions on open

1 carry of weapons were almost unknown. By the latter period, courts had sustained prohibitions
2 on concealed carry, but had made clear that their rationale was premised upon open carry not
3 being prohibited.

4 19. Restrictions upon open carry were enacted in the period after 1870, but two points
5 are worthy of mention prior to discussing them. First, handguns of this period were commonly
6 divided into three classes based on size. The largest were “holster pistols,” so large and heavy
7 that they were not easily carried on the person, and were usually transported in saddle holsters.
8 The 4 ¼ pound Colt Dragoon fell into this class. Below these in size were the “belt pistols,”
9 suitable for wearing in a holster on the belt. The Colt 1860 Army revolver (2 ¾ pounds)
10 illustrates this class. The smallest handguns were “pocket pistols,” small enough for pocket
11 carry. The Colt 1849 illustrates this type, as do derringers. “Holster pistols” and “belt pistols”
12 were sometimes lumped together as “Army pistols,” because unlike pocket pistols they were
13 military issue.

14 20. Second, the rulings sustaining restrictions on open carry came in states where the
15 relevant constitutional protection had a limitation: the right to keep and bear arms “for the
16 common defense.” This enabled their courts to take a militia-related view of the guarantee. In
17 the case of the Federal Second Amendment, an amendment to add “for the common defense”
18 was proposed in the First Senate, but voted down. Journal of the First Session of the Senate 77
19 (1820). *Heller* and *McDonald*, of course, repudiated a militia-centric view of the Second
20 Amendment.

21 21. *Tennessee*. An 1870 amendment to the Tennessee Constitution gave its legislature
22 the power “to regulate the wearing of arms with a view to prevent crime.” *Tenn. Const.*, art. I,
23 §26 (1870). The legislature then forbade the carrying of, *inter alia*, “any belt or pocket pistol or
24 revolver,” whether “publicly or privately.” In *Andrews v. State*, 50 Tenn. 165 (1871), the
25 Tennessee Supreme Court relied upon the “common defense” limitation to hold that its right to
26 arms applied only to arms suited for militia use.

27 We hold, then, that the Act of the Legislature in question, so far as
28 it prohibits the citizen “either publicly or privately to carry a dirk,
sword cane, Spanish stiletto, belt or pocket pistol,” is constitutional.

1 As to the pistol designated as a revolver, we hold this may or may
2 not be such a weapon as is adapted to the usual equipment of the
3 soldier, or the use of which may render him more efficient as such,
4 and therefore hold this to be a matter to be settled by evidence as to
5 what character of weapon)is included in the designation “revolver.”
6 We know there is a pistol of that name which is not adapted to the
7 equipment of the soldier, yet we also know that the pistol known as
8 the repeater is a soldier's weapon—skill in the use of which will add
9 to the efficiency of the soldier. If such is the character of the
10 weapon here designated, then the prohibition of the statute is too
11 broad to be allowed to stand, consistently with the views herein
12 expressed.

13 22. *Andrews* drew upon *Ayamette v. State* for this approach. Later cases which
14 adopted this approach include *English v. State*, 35 Tex. 475 (1872) and *Fife v. State*, 31 Ark. 455
15 (1876). It is noteworthy that both Texas and Arkansas’ constitutions contained variants of the
16 “for the common defense” language.

17 23. There were also a few nineteenth century “outliers.” For example, Idaho in 1889
18 banned all carrying of weapons in incorporated cities, towns and villages; its Supreme Court
19 struck down the measure as unconstitutional. *In re Brickey*, 8 Ida. 597, 70 P. 609 (1902).
20 Arizona Territory permitted incorporated cities and towns to ban carrying of weapons; the
21 measure lapsed when the first state code was adopted in 1913. It should be noted that, at this
22 time period, in Arizona the incorporated cities and towns made up a few square miles of the
23 state’s area, and Idaho was probably the same.

24 24. The starting point of “strict gun regulation” in this country is generally considered
25 New York’s 1911 “Sullivan Act.” That statute forbade the carrying of certain non-firearm
26 weapons such as clubs, forbade the carrying of knives with the intent to use them against another
27 person, and forbade the carrying of a concealed firearm without a permit. Open carrying of
28 firearms was unregulated. I have traced the statute’s amendments in session laws to 1919, and it
remained in this form. N.Y. Session Laws, 1919, ch. 413.

29 25. The rival to the Sullivan Act was the Uniform Pistol Act, later retitled the
Uniform Firearms Act. This was first proposed in 1924, with updated versions issued through
1930. It was adopted (often with modifications) in a number of states. All versions of the

1 Uniform Firearms Act required a permit to carry a weapon concealed or in a vehicle, but not for
2 open carry. §§5, 7.

3 26. Based on this research, I believe that regulation of openly-carried firearms began
4 sometime after the 1920s or 1930s. As new firearm regulations were relatively infrequent during
5 the 1940s and 1950s, I believe most restrictions on open carry would likely date to the 1960s or
6 later, and were by no means universal even then.

7 27. In sum, it appears that regulation of open carrying of arms of any type was
8 unknown in America prior to the ratification of the Second Amendment. Regulation of open
9 carrying of all classes of arms (as opposed to regulating a few types of arms) was almost
10 unknown—Tennessee being the sole exception I have found—prior to the ratification of the
11 Fourteenth Amendment. Regulation of open carry of military or militia suitable firearms seems
12 to originate sometime after the 1930s, and probably in the 1960s.

13 **There Is A Rich History Of Carrying Firearms At Peaceful Protests.**

14 28. There is also historical precedent associating peaceful protests with bearing arms,
15 openly or concealed. Professor Nicholas Johnson’s book, *Negroes and the Gun: The Black*
16 *Tradition of Arms* (2014), spends three chapters (one, seven, and eight) discussing at length the
17 role of arms in the civil rights movement of the 1960s. He points out that the leadership of the
18 movement largely was armed. Even Martin Luther King, while being unarmed personally, did
19 not object to armed volunteers protecting him, and was understanding of others being armed for
20 self-defense. The 1966 March Against Fear in Mississippi was escorted by armed members of
21 the Deacons for Defense. Professor Johnson describes the event:

22 When the march recommenced, armed Deacons were in the wings.
23 At night they guarded the campsites. In the mornings, while the
24 marchers were assembling, the Deacons were in the vanguard,
25 checking along the road and in adjacent woodlots for threats and
26 questioning whites who lingered too long at the edges of the
27 route.... But the Deacons were not invisible. And some of the
28 reporting of their participation confirmed the worries of Roy
Wilkins and Whitney Young. For the marchers on the ground,
though, the Deacons were a comfort. Cleveland Sellers recorded
that the marchers dismissed the media criticism of the Deacons and
made their own practical assessment. “Everyone realized that

without them, our lives would have been much less secure.” pp.
266-67.

29. A friend, Prof. Joe Olson (*Emeritus*, Hamline Law), was a civil rights worker at this period of time and assigned to North Carolina. I have spoken at length with Professor Olson about his experiences. He recounted to me that, at the outset of his work, he was surprised to find that all of his fellow workers were armed, down to the receptionist in the office. When they discovered that he was unarmed, one of them loaned him a spare firearm, until he could buy his own. He recounted that he, along with the other civil rights workers, would carry their firearms with them throughout the day and their activities.

30. Charles L. Cobb’s book, *This Nonviolent Stuff’ll Get You Killed: How Guns Made the Civil Rights Movement* (2015), recounts the history from the standpoint of a participant: Cobb was an organizer for the Student Nonviolent Coordinating Committee. Cobb relates how the possession of arms was a factor in resistance to the Klan during the Reconstruction:

Years later, reflecting on this reign of terror from the ruins of Reconstruction, Frederick Douglass wrote that gaining genuine freedom in the South would require “the ballot-box, the jury-box and the cartridge-box.” Similarly, the forceful antilynching crusader Ida B. Wells-Barnett wrote in 1892, “A Winchester rifle should have a place of honor in every black home, and it should be used for that protection which the law refuses to give.” Most blacks had come to the same conclusion long before and had begun to fight back. The Reconstruction era is full of examples of black people raising their voices—and brandishing weapons—to express their intention to fight for the rights due them as free citizens. In Lowndes County, Alabama, in 1868, armed black men gathered in front of the county courthouse demanding that Democrats vacate their local offices as required by the recently passed Reconstruction Acts. In Macon, Georgia, a group of black men threatened to burn down the city if one more black man was murdered (leading the city council to call a “meeting of reconciliation.”) In the same city, in response to threats from the Klan, an armed guard of 150 men protected the homes of Jeffrey Long ... and AME bishop Henry McNeal Turner.”

Chapter 1.

1 31. During the 1960s, Cobb describes the rise of the Deacons for Defense and Justice,
2 men who took up arms to protect the civil rights workers, and claimed 55 local chapters.
3 Chapter 6. Actual shoot-outs were “remarkably few,” since “few if any white terrorists were
4 prepared to die for the cause of white supremacy.” One activist for the Congress on Racial
5 Equality explained the Deacons’ role:

6 If we had a picket line, these guys were standing on the corner, on
7 both sides of the street. Any time we were having a demonstration
8 these guys would be standing there on both sides of the street.
9 Wherever we went it was like a caravan; these guys in their pickup
trucks with those high-powered rifles up in the back.

10 Chapter 6.

11 32. There is considerable historical precedent for the possession of firearms during
12 peaceful protest in the United States. At times, exercising the Second Amendment was a
13 necessary predicate to exercising the First Amendment. Over time, this has been especially true
14 in instances where the protester who is attempting to exercise his or her First Amendment rights
15 is doing so in favor of a cause or issue that incites anger, hatred, and potential violence in
16 opponents. In such instances, the protester may want to carry a firearm, exercising his or her
17 rights under Second Amendment, in order to provide protection and to deter disruption to their
18 otherwise peaceful protest.

19
20 I declare under penalty of perjury under the laws of the United States that the foregoing is
21 true and correct. Executed October 9, 2020 at Tucson, Arizona.

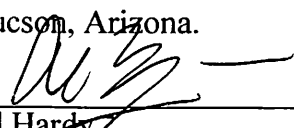
22 
23 _____
24 David Hardy
25 Declarant
26
27
28

Exhibit B

1 David W. Affeld. State Bar No. 123922
Brian R. England. State Bar No. 211355
2 Damion Robinson. State Bar No. 262573
Affeld Grivakes LLP
3 2049 Centurv Park East, Ste. 2460
Los Angeles, CA 90067
4 Telephone: (310) 979-8700

5 Attorneys for Plaintiff
6 Michael Zeleny

7
8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL ZELANY,

12 Plaintiff,

13 vs.

14 GAVIN NEWSOM, *et al.*,

15 Defendants.
16
17
18

Case No. CV 17-7357 RS

Assigned to:
The Honorable Richard G. Seeborg

**EXPERT DECLARATION OF GREG
BLOCK**

Action Filed: December 28, 2017
Trial Date: None Set
19
20
21
22
23
24
25
26
27
28

1 I, Greg Block, declare as follows:

2 1. I, Greg Block, have been retained by the law firm Affeld Grivakes LLP, on behalf
3 of Michael Zeleny, as an expert in this litigation.

4 2. For my work in this case, I am being compensated at the hourly expert rate of
5 \$250.00 per hour, plus expenses. I receive no other form of compensation related to this case. No
6 part of my compensation depends upon the outcome of this case.

7 **Professional Background.**

8 3. Since 1983, I have been a law enforcement instructor. I teach City, County, State
9 and Federal Agencies, plus the Military in Use of Force and Firearms.

10 4. I have over 100 instructor credentials, from the NRA Law Enforcement side, the
11 NRA Civilian side, the Federal Department of Justice, California Department of Justice, the FBI,
12 and ATF.

13 5. Over 45 firearms manufacturers have certified me to teach their weapons systems
14 to Law Enforcement.

15 6. Several state agencies have also certified me: CA-POST which stands for Peace
16 Officer Standards and Training, the other agency is STC, Standards and Training for
17 Corrections. CA-POST oversees sworn law enforcement and STC oversees Probation,
18 Corrections, Prisoner Transport and Bailiffs.

19 7. I am both a certified instructor and certified presenter for both CA-POST and
20 STC, and I am authorized to provide training for them. With STC I am the only non-government
21 affiliated individual to have this distinction. With CA-POST who has over 700 presenters, all but
22 three are the agencies themselves, Police Departments, Sheriff's Office, State Investigative
23 Agencies and County Investigative Agencies. The other two entrepreneurs are law firms that
24 teach officers how to testify in court. There are 58 counties in California. Since 1999, I have
25 been CA-POST's Use Of Force instructor in 36 of those counties.

26 8. With CA-POST, I am also a "SME", which stands for Subject Matter Expert. I
27 deal with the Learning Domains ("LD") in the police academy. I am an SME for twelve of the
28 forty-eight LDs taught in the Basic Police academy, including Use of Force, Firearms, Chemical

1 Agents, Electronic Weapons, Impact Weapons, Impact Weapons, Defensive Tactics, Projectile
2 Less Lethal Weapons, Force Option Simulator, Tactical Firearms, Dangerous Weapons Laws,
3 Crowd Control, Vehicle Operations and Patrol Operations. As needed, as the California Penal
4 Code is amended and additional court decisions are rendered, SME's will work together to
5 update the LDs. The revised LDs are then sent to CA-POST in Sacramento and distributed to the
6 39 Police Academies throughout California. LD 40 is the Dangerous Weapons Law for Law
7 Enforcement, which represents California's gun laws.

8 9. In January 1999, a new Carry Concealed Weapon ("CCW"), law went into effect
9 in California. It was Assembly Bill (AB) 2022, also called the Wright CCW Bill. It took
10 California from a 1-year CCW to a 2-year CCW, plus it changed the residency requirements
11 needed to apply for a CCW. It also mandated training every two years; a minimum of 4 hours for
12 renewal, and a maximum of 16 hours for first time applicants. I was asked by the Orange County
13 Sheriff to be a part of a group, which included Captain Gage, the head of Professional Standards
14 Division (PSD), which oversees the CCW Licensing Bureau, Lieutenant Hogbin, the head of the
15 CCW Licensing Bureau, to create Orange County policies and procedures for the new
16 California CCW law. Those policies and procedures were widely recognized and approved and I
17 presented them to all 58 California County Sheriffs. In June of 1999, I attended the bi-annual
18 meeting of the California State Sheriffs Association (CSSA) in Sacramento. I made a
19 presentation on these policies and procedures, and they subsequently became the state standard.

20 **Information Considered**

- 21 10. In preparing this expert report, I have reviewed the following material:
- 22 a. MPPD Reports_Redacted MP1843-1901
 - 23 b. CAD Reports MP 5084-5099
 - 24 c. 100929 Police Report – Cooperation w Signage and Noise
 - 25 d. 101004 Police Report – 'Cooperation'
 - 26 e. 120210 Police Log – Zeleny Cooperative; No
 - 27 f. 120210 Police Report Re Zeleny – Harassment of Supporters
 - 28 g. 120410 Meeting Minutes re Zeleny Used at Legislative Committee

- 1 h. 120524 Critical Reach Info on MZ
- 2 i. 100525 Police Report
- 3 j. 120613 Log Of Contact with Mr. Zeleny
- 4 k. 120620 Log Documenting Mr. Zeleny Cooperation
- 5 l. 20628 Incident Report – Zeleny Cooperates
- 6 m. Audio Recording of Police Interaction with Mr. Zeleny
- 7 n. Photographs of Mr. Zeleny’s Belt Holster
- 8 o. Chief Dave Bertini’s Deposition Transcripts
- 9 p. Deputy Jeremy Foy Deposition Transcripts
- 10 q. Photos MP5521-5529
- 11 r. Mr. Zeleny’s Deposition Transcript
- 12 s. Meeting with Michael Zeleny, looking at his setup he was carrying/using at the
- 13 time. Evaluating it to make sure he was in compliance with California Penal Code.
- 14 t. Discussing California Penal Code covering owning, transporting and the carry of
- 15 firearms with Mr. Zeleny.

16 **Mr. Zeleny Demonstrated Exceptional Gun Safety And Knowledge of Applicable Law.**

17 11. Mr. Zeleny showed up at my office with two cases. One case contained a semi-
18 automatic pistol and the other contained a semi automatic rifle. The handgun was unloaded in a
19 locked container per California Penal Code 25610. The actual container was also in compliance
20 with California Penal Code 16850. The rifle was transported in compliance with California Penal
21 Code 25400. A long gun does not need to be locked up; it does need to be unloaded and
22 enclosed in a case, which of course it was. Once he unlocked the handgun container, I inspected
23 both guns to make sure they were both properly unloaded; they were.

24 12. I spent quite a bit of time talking to Mr. Zeleny about his two firearms, as they are
25 both considered rare. His knowledge about those firearms was exceptional. He demonstrated
26 safe handling and was conscious of the muzzle at all times. His knowledge of firearms laws at
27 the State level and the Federal level was well above average for a gun owner.

1 **Mr. Zeleny's Interactions With Law Enforcement Were Respectful.**

2 13. In reviewing all police reports, I found Mr. Zeleny complied with all orders and
3 requests given to him by law enforcement. His knowledge of the law far exceeded theirs. In my
4 experience, Law Enforcement officers do not have extensive training in the proper interpretation
5 and application of California's firearms laws. The training they receive is contained in Learning
6 Domain 40 ("LD 40"). LD 40 is California's Dangerous Weapon and Control Laws teaching
7 module. This is a 6-hour segment taught in the Basic Police Academy. There is no required or
8 mandated training on these laws for the rest of a peace officer's career. Law Enforcement
9 officers do not make the decision to arraign or charge individuals with violations of the firearm
10 laws; Deputy District Attorneys make those decisions.

11 **In Los Angeles County, A Concealed Weapons Permit Is Nearly Impossible To Obtain And**
12 **Does Not Represent A Meaningful Avenue For A Resident To Lawfully Possess A Firearm**
13 **Outside Of His Or Her Home.**

14 14. Currently 41 states shall issue, constitutional carry, or a combination of both.
15 "Shall issue" means the permit must be issued to the applicant unless he or she is a convicted
16 felon. "Constitutional Carry" means that it is the applicant's Second Amendment Constitutional
17 right to carry without a permit. California is one of eight "may issue" states. In California, with
18 very limited exceptions, "may issue" means that the issuance of a concealed carry permit is at
19 the sole discretion of the local sheriff in the county where the applicant resides. The local county
20 sheriff has broad discretion whether to issue a CCW or not. In effect, there are 58 counties in the
21 State of California and an equal number of potential interpretations of what constitutes "good
22 cause" for the issuance of a CCW permit. The interpretation of "good cause" is left to the broad
23 discretion of the local county sheriff and is not an objective standard defined in the law.

24 15. Although there are 58 different potential interpretations, they can be loosely
25 grouped into two categories; (i) a strict interpretation employed in the 12 urban counties; and (ii)
26 a far more broad interpretation employed in the 46 rural counties. Nineteen of the top twenty
27 CCW issuing counties in California are rural counties, where a far more permissive
28 interpretation is used in evaluating a CCW application. In California's twelve urban counties,

1 with the exception of Orange County, the standard for obtaining a CCW permit is exceedingly
2 strict, and in many cases, practically impossible to meet. For example, San Francisco County has
3 issued exactly zero CCW permits to the general public.

4 16. As a resident of an urban county, specifically Los Angeles, in my professional
5 opinion, Mr. Zeleny has zero likelihood of successfully obtaining a CCW Permit. As of 2019,
6 there were approximately 10.04 million residents of Los Angeles County. As of March 2020,
7 when the Los Angeles County Sheriff's Department published the most recent report, there were
8 only 158 CCW permits issued in Los Angeles County. The overwhelming majority of people
9 interested in applying for a CCW permit in Los Angeles either are: (i) dissuaded from ever
10 submitting an application; or (ii) are turned away by the LA County Bureau of Licensing. As a
11 practical consequence, under current California law, a resident of Los Angeles County has no
12 reasonably available legal ability to carry a firearm outside of his or her residence.

13 I declare under penalty of perjury under the laws of the United States that the foregoing is
14 true and correct. Executed October 9, 2020 at Huntington Beach, California.

15 
16 Greg Block
17 Declarant
18
19
20
21
22
23
24
25
26
27
28

Exhibit C

1 David W. Affeld, State Bar No. 123922
2 Brian R. England, State Bar No. 211355
3 Damion Robinson, State Bar No. 262573
4 Affeld Grivakes LLP
5 2049 Century Park East, Ste. 2460
6 Los Angeles, CA 90067
7 Telephone: (310) 979-8700

8 Attorneys for Plaintiff
9 Michael Zeleny

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 MICHAEL ZELENY,

13 Plaintiff,

14 vs.

15 GAVIN NEWSOM, *et al.*,

16 Defendants.

Case No. CV 17-7357 RS

Assigned to:
The Honorable Richard G. Seeborg

**EXPERT DECLARATION OF ROBERT
LATHAM BROWN**

Action Filed: December 28, 2017
Trial Date: None set.

1 I, Robert Latham Brown, declare as follows:

2 1. I have been asked to provide my expert opinion and experience regarding the
3 permitting process involved in filming a motion picture or television production that includes the use
4 of firearms in the State of California.

5 2. For my work on this case, I am being compensated at the hourly rate of \$200/hour for
6 the preparation of this report, and \$300/hour for deposition or court testimony. I received no other
7 form of compensation related to this case. No part of my compensation depends upon the outcome of
8 this case.

9 3. **Information Considered:** In preparing this expert report, I have reviewed and
10 considered the following material:

- 11 a. The American Entertainment Armorers Association Amicus Brief in support of
12 Plaintiffs and Petitioners (Proposed); Superior Court Case No. CPF-05-505960,
13 ([https://michellawyers.com/wp-content/uploads/2013/01/Fiscal_American-](https://michellawyers.com/wp-content/uploads/2013/01/Fiscal_American-Entertainment-Armorers-Association-Amicus-Brief-In-Support-of-Plaintiffs-and-Petitioners-Proposed.pdf)
14 [Entertainment-Armorers-Association-Amicus-Brief-In-Support-of-Plaintiffs-and-](https://michellawyers.com/wp-content/uploads/2013/01/Fiscal_American-Entertainment-Armorers-Association-Amicus-Brief-In-Support-of-Plaintiffs-and-Petitioners-Proposed.pdf)
15 [Petitioners-Proposed.pdf](https://michellawyers.com/wp-content/uploads/2013/01/Fiscal_American-Entertainment-Armorers-Association-Amicus-Brief-In-Support-of-Plaintiffs-and-Petitioners-Proposed.pdf));
- 16 b. California Penal Code Sections 26350, 26375, and 25510;
- 17 c. FilmLA Permit website (<https://www.filmla.com/for-filmmakers/permits/>);
- 18 d. California Film Commission website (<https://film.ca.gov/>);
- 19 e. The Producers Guild Code of Credits
20 (https://www.producersguild.org/page/code_of_credits); and
- 21 f. The Directors Guild of America Basic Agreement
22 ([https://www.dga.org/Contracts/~/link.aspx?id=CC4363E3-BC29-443C-9E34-](https://www.dga.org/Contracts/~/link.aspx?id=CC4363E3-BC29-443C-9E34-88F7A534F982&z=z)
23 [88F7A534F982&z=z](https://www.dga.org/Contracts/~/link.aspx?id=CC4363E3-BC29-443C-9E34-88F7A534F982&z=z)).

24 4. **Education:**

- 25 a. Bachelor of Arts degree from Tulane University awarded in September 1969.
- 26 b. Two years of study for an MFA degree from The University of California, Los
27 Angeles (1972 – 1974). Left before completion to enter the AMPTP/DGA Training
28 Program.

c. Association of Motion Picture and Television Producers / Directors Guild of America (AMPTP/DGA) Training Program (1974-1976).

5. **Teaching:** I have been an adjunct professor at the USC School of Cinematic Arts since the fall of 1996. The main course I teach is Production Planning, which covers the methods a Producer uses from when he receives a script through to the point of when the film is delivered. This includes, but is not limited to, scheduling the shoot, budgeting the picture, selecting the locations, procuring required permits, hiring the crew, casting the picture, and all logistical arrangements.

6. **Author:** I wrote *Planning the Low-Budget Film* as the textbook for my USC class. The book covers all the basic steps to mounting a film production. It is now used as a text in film schools beyond USC and is currently ranked by Amazon.com at 1,152 in Film & Television.

7. **Film Production Experience:** I have worked as a Producer, Co-Producer, Production Manager, Unit Production Manager, First Assistant Director, and Second Assistant Director on over 40 motion picture and television productions, and generally all but the Assistant Director positions involved obtaining location filming permits. At times I did this on my own and other times were with the aid of a Location Manager. With or without a Location Manager, I was the person ultimately responsible for obtaining the filming permits. This occurred in many different cities and towns in California, numerous other states, and in other countries. The following paragraphs will give a brief description of my involvement with those productions and whether or not firearms were used in them. The dates in parentheses were when the pictures were released.

8. **Position or Credit Definitions:** **The duties of the positions mentioned in the above paragraph are briefly described below. For a more comprehensive list of duties, see the sources listed.**

a. **Producer:** "Subject to the control of the Owner, the individual receiving Produced By credit shall have final responsibility for all business and creative aspects of the production of the motion picture, with direct participation in making decisions concerning a major portion of the producing functions (see Producers Code of Credits Section 1 for comprehensive list)." Source: Producers Guild of America Code of Credits (https://www.producersguild.org/page/coc_tmp_2)

- b. **Co-Producer / Line Producer:** “The Co-Producer / Line Producer is the single individual who has the primary responsibility for the logistics of the production, from pre-production through completion of production; all Department Heads report to the Co-Producer / Line Producer.” Source: Producers Guild of America Code of Credits (https://www.producersguild.org/page/coc_tmp_2)
- c. **Production Manager / Unit Production Manager:** “The UPM, under the supervision of the Employer, is required to coordinate, facilitate and oversee the preparation of the production unit or units (to the extent herein provided) assigned to him or her, all off-set logistics, day-to-day production decisions, locations, budget, schedules and personnel.” Source: The Directors Guild of America Basic Agreement, pp. 14-5, sec. 1-302, (<https://www.dga.org/Contracts/~link.aspx?id=CC4363E3-BC29-443C-9E34-88F7A534F982&z=z>)
- d. **Assistant Director:** “The First Assistant Director, alone or in conjunction with the UPM, organizes pre-production, including organizing the crew, securing equipment, breaking down the script, preparing the stripboard and a shooting schedule. During production, he assists the Director with respect to on-set production details, coordinates and supervises crew and cast activities and facilitates an organized flow of production activity.” Source: The Directors Guild of America Basic Agreement, p. 16, sec. 1-303, (<https://www.dga.org/Contracts/~link.aspx?id=CC4363E3-BC29-443C-9E34-88F7A534F982&z=z>)

9. **Multiple Television and Feature Film Productions (1976-1979):** Credits – First Assistant Director, Second Assistant Director. After completing the AMPTP/DGA Training Program, I worked on multiple television and feature film productions. My duties on these productions generally did not include obtaining film permits.

10. **The Big Fix (1978):** Credit - Second Assistant Director. When the production department at Universal Studios realized the Unit Production Manager (UPM) was having difficulty keeping up with the pace of the production, they offered me a raise in pay to stick close to the UPM

1 and make sure nothing slipped through the cracks. At the time, Universal did not assign Location
2 Managers to feature productions, so it was left up to me to obtain all the film permits.

3 11. **The Concorde: Airport 79 (1979):** Credit – Unit Production Manager. This was my
4 first job as a UPM. The film was shot in Paris, France; Washington, DC; Alta, UT; and Los Angeles.
5 As the 2nd UPM, I was responsible for the Washington, DC and Alta, UT locations. In Washington,
6 permits were obtained from the National Park Service for the scenes shot at the Lincoln Memorial
7 and the National Mall. In Utah, our filming was confined to the areas above the Alta ski runs,
8 simulating the Alps where the Concorde crash lands in the story.

9 12. **The Nude Bomb (1980):** Credit – Unit Production Manager. This was my first
10 picture as the sole UPM. The film was shot entirely in Los Angeles on local locations and on stages
11 at Universal Studios. It simulated locations in and around Washington, DC. Some weapons were
12 used which mainly involved .38 caliber revolvers.

13 13. **The Blues Brothers (1980):** Credit – Unit Production Manager. This picture was
14 shot mostly in Chicago, IL and surrounding suburbs, with some stage work done at Universal
15 Studios in Los Angeles. Although I did have the assistance of a Location Manager, I handled most of
16 the interaction with Mayor Jane Byrne. There were scenes with a lot of weapons firing, mostly
17 police .38 caliber revolvers. The weapons were all handled by the Prop Master, Michael Milgrom.

18 14. **All Night Long (1981):** Credit – Unit Production Manager. This picture was shot in
19 and around the Los Angeles area including locations in Pasadena and Valencia. No weapons were
20 involved. There was no Location Manager.

21 15. **Bustin' Loose (1981):** Credit – Unit Production Manager. I was brought on to
22 oversee the shooting of additional scenes after Richard Pryor had recovered from an accident in
23 which his face was badly burned. These scenes were shot on stage at Universal and no permits were
24 required.

25 16. **Ghost Story (1981):** Credit – Unit Production Manager. This picture was shot in
26 Saratoga, NY; Woodstock, VT; Philadelphia, PA; and New York, NY. No weapons were involved.

27 17. **The Thing (1981):** Credit – Unit Production Manager. This picture was shot on stage
28 at Universal Studios with locations outside Juneau, AK and Stewart, BC. I acquired all the location

1 permissions required. On an ice field outside of Juneau, we shot a scene involving an actor firing a
2 rifle from a hovering helicopter. We also used pistols and rifles in Stewart, BC and on stage at
3 Universal Studios in California. The Prop Master, John Zemansky, handled them.

4 18. **Star Wars: Episode VI – Return of the Jedi (1983):** Credit – Production Executive.
5 I was unable to accept a UPM credit because Lucasfilm Ltd. was not a signatory to the Directors
6 Guild of America (DGA) Basic Agreement, so I was not able to perform DGA covered work. I
7 supervised two unit managers who were not members of the DGA. Although the majority of the film
8 was largely shot in England and Tunisia, my responsibilities covered the shoots at the Kerner
9 Facility in San Rafael, CA; the Jedediah Smith Redwoods State Park outside Crescent City, CA; and
10 Buttercup Valley, outside Yuma, AZ. Buttercup Valley is actually in California, but Yuma is the
11 nearest town with motels. All weapons were futuristic inventions of the prop department. No actual
12 weapons were used.

13 19. **Iceman (1984):** Credit – Unit Production Manager. This picture was shot in
14 Vancouver, BC and Stewart, BC. I don't recall any weapons being used. If they had been the
15 Canadian UPM, Justis Greene, would have sought the appropriate permits if needed.

16 20. **Indiana Jones and the Temple of Doom ((1984):** Credit – Production Manager. My
17 responsibilities on this picture were the shoots on the Tuolumne River east of Modesto, CA;
18 Mammoth Mountain, CA; and Marin County, CA. No weapons were used.

19 21. **Best Defense (1984):** Credit – Unit Production Manager. This picture was shot in Los
20 Angeles, CA and the area around Jericho, Israel. All weapons use took place in Israel.

21 22. **The Goonies (1985):** Credit – Unit Production Manager. I was brought in to manage
22 additional scenes during postproduction, so I am not listed in the credit crawl. These were shot in
23 Los Angeles, CA, both on stage and on local location. No weapons were used.

24 23. **Warning Sign (1985):** Credit – Associate Producer / Unit Production Manager. The
25 film was shot on location in La Crescenta, CA and Payson, UT. Semi-automatic pistols and a
26 revolver were used. These were handled by the Prop Master, Larry Byrd.

1 24. **Blue City (1986):** Credit – Unit Production Manager. This picture was shot in and
2 around Los Angeles, CA. Revolvers and semi-automatic pistols were used in filming. All the
3 weapons were controlled by the Prop Master, Jack Marino.

4 25. **Howard the Duck (1986):** Credit – Co-Producer / Unit Production Manager. This
5 picture was shot in Northern California consisting of locations in San Francisco, Petaluma, Napa,
6 San Rafael, Black Point, Modesto, Nicasio, Oakland, Herald, Rio Vista, and Sacramento. No
7 firearms were used.

8 26. **One Crazy Summer (1986):** Credit – Unit Production Manager. This picture was
9 shot in Cape Cod and Nantucket, MA. There were rifles present in a scene, but they were never
10 fired. The Prop Master, Art Lipschultz handled the weapons.

11 27. **Spaceballs (1987):** Credit – Production Manager. This picture did shoot on location
12 in Buttercup Valley, CA but was mostly shot on stage at what is now Sony Studios in Culver City,
13 CA. At that time, it was still MGM Studios. I was assisted by a Location Manager, Michael Meehan.
14 All weapons were products of the prop department.

15 28. **Clean and Sober (1988):** Credit – Unit Production Manager. This picture was shot in
16 Pennsylvania, Delaware, and New Jersey, with stage work being done at Burbank, CA. No weapons
17 were used.

18 29. **Elvira: Mistress of the Dark (1988):** Credit – Production Manager. I was brought in
19 to do additional scenes in post-production. Most of our filming took place on stage at the Burbank
20 Studios except for a 2nd unit in Las Vegas, NV which I directed. No firearms were used.

21 30. **Child's Play (1988):** Credit – Unit Production Manager. The portion of picture I was
22 involved with was filmed in and around Los Angeles. I replaced the original UPM who had left the
23 film. Handguns were used in some scenes. These were under the supervision of the Prop Master, Art
24 Shippee. I was assisted in obtaining film permits by a Location Manager, Michael Malone.

25 31. **The War of the Roses (1989):** Credit – Unit Production Manager. This picture was
26 mostly shot on stage and local locations in Los Angeles, with a few scenes being shot at Whidbey
27 Island, WA. No firearms were used.

32. **Child's Play 2 (1990):** Credit – Executive Producer. This picture was shot mostly in Pasadena, Long Beach, and Los Angeles, CA. There were police officers portrayed who were wearing holstered side arms. These were probably rubber props.

33. **Child's Play 3 (1991):** Credit – Producer / 2nd Unit Director. This picture was shot mostly in Southern California with the military academy exteriors shot at Kemper Military School in Boonville, MO. Handguns and M1 rifles were used in both California and Missouri. The weapons were all under the custody and supervision of the Prop Master, Jack Marino. Location filming permits were obtained by a Location Manager, William Bowling. No special permits were required for the use of the weapons.

34. **Babylon 5: The Gathering (1993):** Credit – Producer / Unit Production Manager. This was the pilot episode for a television episodic series. It was shot on stage in Santa Clarita, CA at the Santa Clarita Studios. No actual firearms were used.

35. **Robin Hood: Men in Tights (1993):** Credit – Executive in Charge of Production / Production Manager. This picture was shot in and around Los Angeles, CA. All weapons were medieval. No firearms were involved. William Bowling was the Location Manager.

36. **Showgirls (1995):** Credit – Unit Production Manager. This picture was shot in Los Angeles, CA; Lake Tahoe, NV; and Las Vegas, NV. No firearms were used.

37. **Dracula: Dead and Loving It (1995):** Credit – Associate Producer / Production Manager. This picture was shot in and around Los Angeles, CA. No firearms were used.

38. **Starship Troopers (1997):** Credit – Production Manager. This picture was shot in Southern California; Hell's Half Acre outside of Casper, WY; and Kadoka, SD. William Bowling was the Location Manager. During the shoot in Hell's Half Acre, we used futuristic prop weapons built on real automatic rifles, plus real Browning .50 caliber machine guns, all of which were fired using blank cartridges. Since the Federal Firearms Act of 1938, automatic weapons have been strictly controlled. These prohibitions were renewed in the Gun Control Act of 1968. I hired Robert "Rock" Galotti as our Weapons Coordinator/Armorer. Mr. Galotti is a Federal Firearms Licensee (FFL) and he was legally authorized to be in possession of such weapons and to arrange their transportation. He maintained strict control over the weapons. At the end of each shooting day, Mr.

Galotti caused the weapons to be secured at the Casper, WY Police Department. No permits were required for our use of these weapons because Mr. Galotti had control of them.

39. **The Parent Trap (1998):** Credit – Production Manager. My involvement with this picture was for the shooting sequences in the western United States. This included locations in California such as San Francisco, Camp Seely in Crestline, Lake Gregory, Long Beach Airport, Napa Valley, RMS Queen Mary Long Beach, Santa Clarita, and Los Angeles. No weapons were used.

40. **Hollow Man (2000):** Credit – Production Manager. This picture was shot in Washington, DC and Los Angeles, CA. There were handguns used but I believe they were non-functional replicas.

41. **Ali (2001):** Credit – Production Manager. I am not listed in the credit crawl since I was only involved in prepping the picture to shoot after which I handed the picture over to another UPM. My work included scheduling the shoot, budgeting the picture, hiring the crew, arranging to transport the crew and equipment to Uganda, and tracking costs during the prep period.

42. **Spider-Man (2002):** Credit – Production Manager. I am not listed in the credit crawl since I was brought in to oversee the shooting of additional scenes and to manage the postproduction period. No firearms were used for these additional scenes.

43. **The Anarchist Cookbook (2002):** Credit – Producer. This was a low budget production shot in and around Plano, TX with a day at the Fort Worth Stockyards. There was a handgun used which was obtained by the Prop Master, Jason Hammond.

44. **Vampires: Los Muertos (2002):** Credit – Line Producer / Unit Production Manager. I am not listed in the credit crawl since I was brought in to manage a few added scenes. The picture was filmed entirely in Mexico except for the added scenes which I supervised. These were shot in Los Angeles. There were handguns and a shotgun used. These were obtained by the Prop Master, Richard Blake Wester. No special permits were required.

45. **The Santa Clause 2 (2002):** Credit – Production Manager. This picture was shot entirely in Canada. I was on the film only for the prep period during which I scheduled and budgeted the movie.

1 46. **Charlie's Angels: Full Throttle (2003):** Credit – Unit Production Manager. I was
2 brought in to manage the additional scenes, so I am not listed in the credit crawl. No firearms were
3 used.

4 47. **S.W.A.T. (2003):** Credit – Unit Production Manager. This picture was shot in and
5 around Los Angeles and at Mojave Airport. Many firearms were used including automatic weapons.
6 There were large shoot-outs staged in Burbank and downtown Los Angeles. All weapons were under
7 the control of our Armorer, Michael Papac who is an FFL. Our main concern was how the noise
8 would affect residents and businesses in the surrounding areas.

9 48. **A Lot Like Love (2005):** Credit – Unit Production Manager. This picture was shot in
10 and around Los Angeles and in New York, NY. No firearms were used.

11 49. **Lords of Dogtown (2005):** Credit – Unit Production Manager. I was brought in to
12 manage the additional scenes, so I am not listed in the credit crawl. It was shot mostly in Venice, CA
13 and other Los Angeles areas. No firearms were used.

14 50. **Local Color (2006):** Credit – Co-Producer / Unit Production Manager. This was a
15 low budget picture shot in New Orleans and Covington, LA. No firearms were used.

16 51. **The Holiday (2006):** Credit – Unit Production Manager. I was brought in to
17 supervise additional scenes, so I am not listed in the credit crawl. These were shot in and around Los
18 Angeles.

19 52. **Hard Breakers (2010):** Credit – Producer / Production Manager. This was a low
20 budget independent feature shot in and around Los Angeles. No firearms were used.

21 53. **1982 (2013):** Credit – Co-Producer. This was a low budget short film. It was shot in
22 Los Angeles. No firearms were used.

23 54. **Love is Not Love (2019):** Credit – Line Producer. This was a low budget
24 independent feature shot in and around Los Angeles. No firearms were used.

25 55. **Current Productions:** Credit – Producer. I am currently involved in the development
26 of four films, two of which will involve firearms.

1 56. **Planning for the use of firearms in a scene:** When I am employed as a Co-
2 Producer, Line Producer, or Unit Production Manager, there are discrete steps that I follow when
3 planning a film shoot in which firearms are used. These are outlined in the following paragraphs.

4 57. **Read the script.** The first step is to read the script and note any scenes in which
5 firearms are used.

6 58. **Create the breakdown sheets.** A breakdown sheet is created for each scene in the
7 script. In the top half of this sheet are listed the scene numbers, whether the scene is exterior,
8 interior, or both, the set name, the time of day, how long the scene is in terms of pages and eighths of
9 a page, a brief but unique synopsis of the scene, the page of the script the scene starts on, the story
10 day of the scene, what filming unit will be shooting the scene, and the locations of the shoot.

11 a. **Filling in the breakdown sheet:** The bottom half of the breakdown sheet is where all
12 the specific elements that are needed to shoot the scene are listed. These would
13 include cast members; background actors (extras); stunt players; picture cars or other
14 vehicles appearing in front of camera; props; camera equipment; special effects that
15 occur in the scene such as fire, rain, or explosions; costume notes; makeup and hair
16 notes; animals; animal wranglers; music notes; sound notes; art department notes; set
17 dressing; greenery; special equipment; security; additional labor; visual effects notes
18 and personnel; and miscellaneous notes.

19 b. **Props.** Props are any objects which are handled by the actors or extras. Jewelry,
20 eyeglasses, and watches are also included in props, as are weapons of various sorts.
21 These can be replicas of weapons, for example they may be an airsoft or plastic gun,
22 or they can be real weapons such as knives, swords, or firearms.

23 c. **Firearms.** Motion pictures and television productions usually use Title 1 firearms.
24 These are firearms that are available to the general public, such as rifles from bolt
25 action to semi-automatic, revolvers, and semi-automatic handguns. On occasion, we
26 also use firearms that are prohibited to the general public in so far as they require a
27 special federal permit and license to possess them. For more complex or higher
28

1 volume of firearms or other weapons, we employ an Armorer who has a federal
2 firearms license.

3 d. **Title 1 Firearms.** In California, absent a statutory exemption, if a Prop Master or
4 Armorer wanted to rent a Title 1 firearm to use in a motion picture or television
5 production, the Prop Master or Armorer would need to undergo a background check
6 every time he or she rented a firearm. Then when the Prop Master or Armorer wanted
7 to turn the firearm over to an actor to use in a scene, the actor would have to go
8 through a background check as well. Legislated waiting periods would also apply in
9 each of these transfers. This would be unworkable in the making of a motion picture
10 or television production and would severely impact the filmmakers.

11 e. **The California Entertainment Firearms Permit.** The California Legislature passed
12 amendments to California's firearms restrictions creating the Entertainment Firearms
13 Permit ("EFP"). This is a California specific permit that a Prop Master or any other
14 nonprohibited person can register for and can be used in place of the repeated
15 background checks. It also allows an EFP holder to give the firearm to an actor or
16 other Authorized Participant and take it back after the scene is over, without doing
17 background checks or requiring a waiting period. For purposes of California's ban on
18 the open carry of weapons, the actor or participant to whom the firearm is loaned is
19 an "Authorized Participant" as that term is used in California Penal Code Sections
20 26375 and 25510.

21 f. **Federal Firearm License.** In order to possess, transport, rent, or transfer firearms
22 that are prohibited by the Federal Firearms Act and succeeding laws, a Prop Master or
23 Armorer must have a Federal Firearms License ("FFL").

24 59. **Create the shooting schedule.** Once the breakdown sheets are completed, the
25 database of breakdown sheets is viewed in the form of a strip board, where each scene is individually
26 displayed on a strip. These strips can be rearranged and sorted on the board with day markers to
27 create a shooting schedule. It's at this point that I would consult with a Prop Master or Armorer if
28 the motion picture or television production requires operational firearms.

1 60. **Prop Master or Armorer.** The decision whether to hire a Prop Master or an Armorer
2 rests on the type and the number of weapons needed. On a movie such as STARSHIP TROOPERS, I
3 had a complete department headed by an Armorer to handle all weapons. In that film, we were using
4 many prohibited weapons including two Browning .50 caliber machine guns. Once the Prop Master
5 or Armorer is hired, I would discuss with him or her the weapons we needed and solicit his/her
6 recommendations. At that time, we would not know the names of all the people who might be
7 handling the firearms in any given scene. This is because we would not necessarily have the motion
8 picture or television production completely cast and would not yet have hired the stunt players. Any
9 extras who would be given firearms in the scenes might not be hired until the day of shooting. In
10 addition, on any shooting day, the Director may change his or her mind as to who will be firing the
11 weapons. In my experience, neither a Prop Master nor an Armorer are concerned with or request the
12 names or identities of the specific actors and extras who will be Authorized Participants. With
13 respect to the Authorized Participants, the only concern a Prop Master or Armorer has is to make
14 sure that the Authorized Participants are not legally prohibited from possessing a firearm and are
15 capable of safely handling the firearm. The Prop Master or Armorer will then arrange for the
16 procurement of the prop weapons and are responsible for the transport, storage, and safe use of the
17 firearms.

18 61. **Film permits.** One to two weeks prior to the filming of a scene, the production
19 company's designee will apply for the location filming permits. The application asks for information
20 related to the logistics of the shoot, including for example; what will take place in the scene, how
21 long we expect to be at the location, whether we will be firing weapons, the approximate size of the
22 crew, whether we will be using pyrotechnics, where we will be parking our equipment, and whether
23 we will need traffic control on public streets. It's not that different from applying for a permit to
24 perform street maintenance. At no time during the permitting process, have I ever been asked to
25 provide the names or identities of the actors, stunt players, and extras who will be using the firearms
26 in any specific scene, and I have never volunteered that information. In fact, often at this stage of the
27 process, that information is not yet known or finalized.

1 62. The film permit will be issued with certain restrictions such as how many policemen
2 we must hire and whether we need a fire safety officer with us during the shoot. We will also be
3 required to notify residents and businesses within a 500-foot radius of our location about the
4 upcoming shoot. If it's a residential area, we will be restricted to certain hours of the day (e.g. we
5 can't arrive before 7:00 am and must be gone by 10:00 pm). The film permit does not identify or
6 reference the names or the identities of the Authorized Participants in the shoot. Obviously, any
7 notification to residents or businesses likewise does not include the names or identities of the
8 Authorized Participants.

9 63. **On the day of filming.** The call sheet for that day will have a notice that there will be
10 gunfire on the set. We do the same if there will be explosions or if there will be anything similar the
11 crew should be aware of. During the set up of the shot, a mandatory safety meeting will be held by
12 the First Assistant Director in conjunction with the Prop Master and/or Armorer attended by the
13 Director, actors, stunt players, extras, and crew. Hearing protection is issued to the crew. Cast
14 members, stunt players, and extras will be issued foam ear plugs that won't be visible to the camera.

15 64. Before each take, the weapons are checked, loaded with blank cartridges, and handed
16 to the Authorized Participants (the actors, stunt players, and extras) by the Prop Master/Armorer.
17 After each take, the weapons are secured by the Prop Master/Armorer, cleared, and reloaded with
18 blank cartridges if there is to be another take.

19 65. The use of firearms in motion pictures and television productions is highly regulated,
20 especially in California. It would be more so if not for the special exemptions from the state firearm
21 laws that are granted to the motion picture and television industry. Without those exemptions, it
22 would be impossible to make certain types of productions in California.

23
24 I declare under penalty of perjury under the laws of the United States that the foregoing is
25 true and correct. Executed October 9, 2020 at Westlake Village, California


26 
27 Robert Latham Brown
28 Declarant

Exhibit D

1 David W. Affeld, State Bar No. 123922
Brian R. England, State Bar No. 211355
2 Damion Robinson, State Bar No. 262573
Affeld Grivakes LLP
3 2049 Century Park East, Ste. 2460
Los Angeles, CA 90067
4 Telephone: (310) 979-8700

5 Attorneys for Plaintiff
6 Michael Zeleny
7
8

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MICHAEL ZELENY,
12 Plaintiff,
13 vs.
14 GAVIN NEWSOM, *et al.*,
15 Defendants.
16
17
18

Case No. CV 17-7357 RS

Assigned to:
The Honorable Richard G. Seeborg

**EXPERT DECLARATION OF
MICHAEL TRISTANO**

Action Filed: December 28, 2017
Trial Date: None Set

1 I, Michael Tristano, declare as follows:

2 1. I have been retained by Affeld Grivakes LLP on behalf of Michael Zeleny, as an
3 expert in the above-referenced litigation.

4 2. As an independent expert, I have been asked to give my opinion on the issue of
5 permitting for film, television, and other video projects, and, specifically, the permitting and use of
6 firearms on such projects.

7 3. For my work on this case, I am being compensated at a rate of \$500 per hour, plus
8 expenses. I have not received and will not receive any other compensation related to this case. No
9 part of my compensation depends on the outcome of this case.

10
11 **PROFESSIONAL BACKGROUND AND EXPERIENCE**

12 4. I have been a professional Armorer and Special Effects Technician for more than 30
13 years. I have worked on more than 500 feature films, television shows and video projects, most of
14 which are listed on the Internet Movie Database (imdb.com). These projects include: 3:10 to
15 Yuma, The Purge, Medal of Honor, I Am Still Here, and Enron: The Smartest Guys in the Room.

16 5. Most of my work is done in the State of California, and my licenses and permits to
17 do this work include:

- 18 1) A California DOJ Entertainment Firearms Permit;
- 19 2) A Federal Firearms License (FFL);
- 20 3) The four California Dangerous Weapon Permits, which include permits for
21 assault weapons and .50 caliber weapons, machine guns, short-barrel rifles
22 and shotguns, and destructive devices; and
- 23 4) The California Certificate of Eligibility.

24 6. Besides providing on-set armorer services and training of actors, actresses, extras,
25 and stunt people (collectively "Authorized Persons") for proper and safe use of blank-firing
26 firearms on set, my company also rents and provides non-firing replica and rubber guns.

27 7. I have also been an on-camera weapons expert on shows for The History Channel,
28 The Discovery Channel and A&E.

1 8. When I am involved in any project using firearms on the set of a motion picture, TV
2 show or video project, I advise the production on what firearms I think they should use in their show
3 and what permitting we will require regarding the use of firearms during the project.

4 9. Based on my extensive career as a professional, licensed motion picture and
5 television Armorer, I believe that I am qualified to address the questions presented to me.

6
7 **INFORMATION CONSIDERED**

8 10. In preparing this expert report, I have reviewed the relevant applications and
9 standards regarding permitting for film, television and video projects in the State of California, and
10 the use of firearms on set.

11 11. My analysis of the information relevant to this case is ongoing, and I expect to
12 continue receiving information and questions as they are presented to me, and it is possible that new
13 information may affect certain conclusions in this report. I therefore reserve the right to supplement
14 it.

15
16 **OPINIONS**

17 12. If called upon to testify, I would explain the following facts and opinions regarding
18 permitting for film, television and video productions, and the inclusion of proper permitting for the
19 use of firearms on these productions.

20 13. When I am contacted by a production to provide their show with Armorer services
21 and the rental of blank-firing guns, non-firing replicas and rubber guns, I am involved with the
22 production company in the process of obtaining the necessary permits. I always insist that
23 productions get the proper permitting and cover all of the requirements in the specific area and
24 jurisdiction they are filming in.

25 14. In the State of California, although rules and regulations may vary somewhat from
26 county to county and city to city, the general state policies are the same:

- 27 1) The production must apply for a permit for all of the days and at each
28 location where the filming will be taking place through the offices in

1 charge of filming in the respective jurisdictions. In Los Angeles, for
2 example, permits are applied for and obtained from FilmLA.

- 3 2) If there is going to be blank-firing weapons used and blanks fired, both the
4 permit application and the permit must include this information, with a
5 description of the type of gunfire (such as single shot, semiautomatic, fully
6 automatic, or black powder blanks) and the load size of the blanks (1/4
7 load, 1/2 load, or full load) so the proper notifications can be made to the
8 surrounding area.
- 9 3) Is the blank gunfire to take place in the interior or exterior of the location?
10 If there is gunfire in the exterior of the location, or in any area open to the
11 public view, at least one Police Officer is usually required to be assigned to
12 the location by the permitting office. A Fire Marshall or FSO (Fire Safety
13 Officer) may also be assigned by the permitting office if the location is
14 located in a fire zone, or if there are possible flammable elements at the
15 location.
- 16 4) If there is no blank gunfire, but replica or rubber guns are brandished in an
17 exterior part of the location, or an area open to view by the public, this
18 must also be on the permit application and the permit and a Police Officer
19 will still be assigned to the location to deal with civilians to make sure
20 everyone knows this is not an active shooter situation.
- 21 5) Whenever any real or blank-firing firearms are present on a set, a licensed
22 Armorer must be present to handle blank-firing weapons and a licensed
23 Prop Master for non-firing replica guns and rubbers. This is so proper
24 safety protocols are always followed.
- 25 6) Permitting offices do not inquire about the names or identities of the
26 Authorized Participants using the weapons, as such information is neither
27 necessary nor relevant for the permitting process. In fact, when the permit
28 applications are being prepared, submitted, and considered, often times the

1 specific names and identities of the Authorized Participants are not known
2 or finalized. In particular, the names and identities of extras serving as
3 Authorized Participants may well not be known until the actual day of the
4 shoot and can change throughout the day in the director's discretion. In my
5 experience, during the permitting process, I have never been asked to
6 provide, and have not provided, the names and identities of the anticipated
7 Authorized Participants to any permitting office or agency.

- 8 7) In contrast to the permitting offices and agencies, licensed Armorers are
9 required to ensure that none of the Authorized Participants using the real
10 and/or blank-firing weapons is a felon or a person prohibited from possessing
11 a firearm. Such "prohibited persons" may use replica or rubber weapons only.
12 8) While any blank-firing, replica or rubber weapons are on set, they remain in
13 the charge of the Armorer and/or Prop Master, until they are needed to be
14 placed in the hands of the Authorized Participants and/or on the set. After the
15 shots are completed, the firearms are taken back and remain in the charge of
16 the Armorer and/or Prop Master.
17

18 I declare under penalty of perjury under the laws of the United States that the foregoing is
19 true and correct. Executed October 9, 2020 at Los Angeles, California.

20 
21 Michael Tristano
22 Declarant
23
24
25
26
27
28

Exhibit E

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3
4 IN RE MATTER OF:)
)
5)
)
6 MICHAEL ZELENY,)
)
7 Plaintiff,)
)
8 vs.) CASE NO. CV 17-7357 JCS
)
9 EDMUND G. BROWN, JR., et al.,)
)
10 Defendant.)
)

11

12

13 VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

14 VOLUME I

15 Menlo Park, California

16 Tuesday, March 19, 2019

17

18

19

20

21

22

Stenographically Reported by:

23

HEATHER J. BAUTISTA, CSR, CRR, RPR

24

25

1 VIDEOTAPED DEPOSITION of CHIEF DAVE BERTINI,
2 taken before Heather J. Bautista, CSR No. 11600, a
3 Certified Shorthand Reporter for the State of
4 California, with principal office in the County of Santa
5 Clara, commencing on Tuesday, March 19, 2019, 10:07
6 a.m., at 1100 Alma Street, Suite 210, Menlo Park,
7 California 94025.

8

9 APPEARANCES OF COUNSEL:

10

11 For the Plaintiff:

12 Affeld Grivakes LLP
13 BY: DAMION ROBINSON, ESQ.
14 2049 Century Park East
15 Suite 2460
16 Los Angeles, California 90067
17 Phone: (310) 979-8700 / Fax: (310) 979-8701
18 dr@agzlaw.com

19

20 For the Defendant:

21

22 Howard Rome Martin & Ridley LLP
23 BY: TODD H. MASTER, ESQ.
24 1900 O'Farrell Street
25 Suite 280
26 San Mateo, California 94403
27 Phone: (650) 365-7715 / Fax: (650) 364-5297
28 tmaster@hrmlaw.com

29

30 ALSO PRESENT:

31 Nick Perry, Videographer

32 Michael Zeleny, Plaintiff

33

1	INDEX OF EXAMINATION	
2		PAGE
3	CHIEF DAVE BERTINI	
4	EXAMINATION BY MR. ROBINSON	7
5		
6		
7	--o0o--	
8		
9		
10	Instructed Not to Answer	
11	Page Line	
12	11 15	
13	13 9	
14	138 16	
15	202 4	
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	INDEX OF EXHIBITS		
2	Exhibit No.	Description	Page
3	Exhibit 29	Notice of Deposition	9
4	Exhibit 30	special event permit flow chart	46
5	Exhibit 31	E-mail Bates marked MP1381 through 1385	84
6	Exhibit 32	E-mail Bates marked MP1437	88
7	Exhibit 33	Special Event Permit Application	106
8		Frequently Asked Questions	
9	Exhibit 34	Printout from special event permit website	106
10	Exhibit 35	Frequently Asked Questions	114
11	Exhibit 36	Film permit application	125
12	Exhibit 37	Photocopy of Penal Code 313.1	136
13	Exhibit 38	Still image of animation	136
14	Exhibit 39	Printout of a portion of Mr. Zeleny's website	143
15			
16	Exhibit 40	E-mail Bates marked MP214	149
17	Exhibit 41	E-mail Bates marked MP261	161
18	Exhibit 42	E-mail with daily police log attached, Bates marked MP55-MP58	164
19	Exhibit 43	Policy 467 - Menlo Park Police Department Policy Manual	167
20			
21	Exhibit 44	E-mail exchange Bates marked MP41	178
22	Exhibit 45	E-mail thread Bates marked MP226-228	178
23	Exhibit 46	Menlo Park Police Department report Bates marked MP1895-1898	184
24	Exhibit 47	Menlo Park Police Department report Bates marked MP1871-1873	187
25			

1	INDEX OF EXHIBITS - CONTINUED		
2	Exhibit No.	Description	Page
3	Exhibit 48	E-mail with daily police log Bates marked MP61-65	188
4	Exhibit 49	Menlo Park Police Department report Bates marked MP151-154	191
5			
6	Exhibit 50	Document Bates marked MP120-124	202
7	Exhibit 51	Police Management Staff Meeting Minutes dated 08/07/12 Bates marked MP206-210	203
8			
9	Exhibit 52	Menlo Park Police Department management staff meeting minutes dated 04/03/12 Bates marked MP88-94	205
10			
11	Exhibit 53	E-mail Bates marked MP00004	210
12	Exhibit 54	E-mail Bates marked MP60	214
13	Exhibit 55	Memo from the San Mateo County District Attorney's Office to San Mateo County police officers regarding the open carry of firearm in 2010 - Bates marked MP5397	220
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 Tuesday, March 19, 2019

2 10:07 a.m.

3 --oOo--

4 THE VIDEOGRAPHER: Good morning. My name is

10:07 5 Nick Perry. I am the videographer for today. I
6 represent Watson Court Reporters in Los Angeles,
7 California. I am not financially interested in this
8 action, nor am I a relative or employee of any attorneys
9 or of any of the parties.

10:08 10 Today's date is Tuesday, March 19th, 2019. The
11 time is approximately 10:07 a.m.

12 This deposition is taking place at 1100 Alma
13 Street, Suite 210, in Menlo Park, California.

14 The case number is CV177357JCS. In the United
10:08 15 States District Court, Northern District of California.

16 The case is entitled Zeleny versus Brown, Jr.
17 This deposition is being taken on behalf of the
18 plaintiff.

19 Here begins Media No. 1 of the deposition of
10:08 20 Chief Dave Bertini.

21 The court reporter is Heather Bautista. Okay.

22 Will the -- will the attorneys please introduce
23 themselves, starting with the questioning attorney.

24 MR. ROBINSON: Damion Robinson for plaintiff,
10:09 25 Michael Zeleny.

1 MR. MASTER: Todd Master for Defendant City of
2 Menlo Park and Chief Dave Bertini.

3 THE VIDEOGRAPHER: Will the court reporter
4 please swear in the witness.

10:09 5 CHIEF DAVE BERTINI,
6 having been first duly sworn, was examined and testified
7 as follows:

8 MR. ROBINSON: And just to note on the record
9 that we've agreed that this deposition will be a
10:09 10 combined deposition of Chief Bertini individually and in
11 his capacity as a person most knowledgeable for the City
12 of Menlo Park.

13 MR. MASTER: That's correct.

14 EXAMINATION

10:09 15 BY MR. ROBINSON:

16 Q. Chief Bertini, we haven't been introduced
17 before. My name is Damion Robinson. I'm an attorney
18 representing Michael Zeleny, who's present. And, today,
19 we're going to be taking your deposition, both
10:09 20 individually and as the person most knowledgeable
21 designated by the City of Menlo Park.

22 Do you understand that?

23 A. I do.

24 Q. Have you ever had your deposition taken before?

10:09 25 A. I have.

1 Q. Approximately how many times?

2 A. Approximately half a dozen.

3 Q. Have you ever testified in court?

4 A. Yes.

10:10 5 Q. I assume you're familiar with the basic ground
6 rules of testifying in a deposition or in court.

7 A. I am.

8 Q. Have you ever had any training relating to
9 giving testimony, either in court or in depositions?

10:10 10 A. I have.

11 Q. What type of training was that?

12 A. Training in the basic police academy, along
13 with when Prop 115 was enacted, training on how to
14 testify to hearsay in preliminary hearings.

10:10 15 Q. I assume, as part of your training, you
16 understand that it's very important that the answer to a
17 question connects to the question that's being asked;
18 correct?

19 A. Yes.

10:10 20 Q. Okay.

21 And you understand today that you're under
22 oath; right?

23 A. Correct.

24 Q. Although we're in an informal setting of a
10:10 25 conference room, it's the same effect as it would have

1 at trial.

2 A. I understand.

3 Q. And I won't give you the admonitions about how
4 to keep a clear record. I assume those you know.

10:10 5 Is there anything that would prevent you from
6 giving full and accurate testimony today?

7 A. No.

8 Q. Okay.

9 We have in front of you Exhibit 29.

10:11 10 It's a multiple-page document. The first page
11 is Notice of Deposition of the City of Menlo Park; is
12 that accurate?

13 A. Yes.

14 Q. Have you seen Exhibit 29 before?

10:11 15 A. I have.

16 Q. When did you see it?

17 A. When it was forwarded to me by our attorneys.

18 Q. And if I could have you please turn to

19 Attachment 1. Attachment 1 is a list of topics for
10:11 20 deposition testimony. I'm just going to ask you to look
21 through them and verify that you're the person who's
22 been designated by the City to testify on these topics.
23 If there are any that you have not been designated on,
24 either you or counsel can let me know.

10:12 25 MR. MASTER: I will say, Counselor, that the

1 City does not have a designated individual to respond to
2 Topic No. 25, which pertains to all actions or other
3 legal proceedings between Plaintiff --

4 (Reporter interruption.)

10:12 5 MR. MASTER: -- and NEA. It's short for New
6 Enterprise Associates, I believe.

7 MR. ROBINSON: Sounds right.

8 THE WITNESS: And aside from Number 25, yes, to
9 your question.

10:13 10 Q. (By Mr. Robinson) So you are the person most
11 qualified on behalf of the City to testify as to 1
12 through 24 and then No. 26?

13 A. Correct.

14 Q. What have you done to prepare for your
10:13 15 deposition?

16 A. I've researched all the areas that have been
17 listed in Attachment 1.

18 Q. Okay.

19 And how did you go about researching those?

10:13 20 A. I went back and looked at all the documents
21 that we produced pursuant to this lawsuit.

22 Q. Were you involved in the process of collecting
23 documents to be produced in this lawsuit?

24 A. Those documents that pertain to me
10:13 25 specifically, yes.

1 **Q.** I assume there were other people within the
2 City who also collected documents.

3 **A.** That's correct.

4 **Q.** What were the documents that you collected that
10:14 5 pertain to you specifically?

6 **A.** Specifically, police related files,
7 computer-aided dispatch reports, files that I had
8 personal possession of, and, in some cases, e-mails.

9 **Q.** So in preparation for today, you reviewed the
10:14 10 files that the City has produced; correct?

11 **A.** That is correct.

12 **Q.** Did you do anything other than reviewing the
13 files that the City has produced?

14 **A.** I also met with my attorney.

10:14 15 **Q.** Without getting into the substance of any
16 meeting with your attorney, when did that meeting
17 happen?

18 MR. MASTER: I'll just object it's not relevant
19 for purposes of this questioning. Instruct him not to
10:14 20 answer under attorney-client privileged communication.

21 **Q.** (By Mr. Robinson) You're going to follow your
22 attorney's instruction not to answer?

23 **A.** Correct.

24 **Q.** Let's start here. Did you talk with anyone
10:15 25 else in preparation for your deposition, other than

1 Counsel?

2 **A.** Yes.

3 **Q.** Who else did you talk to?

4 I spoke to our city manager to advise her of

10:15 5 the deposition, I spoke to the assistant city manager to

6 advise him of the deposition, and I also spoke to Janice

7 Dong from the Public Works Department regarding,

8 specifically --

9 (Reporter interruption.)

10:15 10 THE WITNESS: -- film permits.

11 **Q.** (By Mr. Robinson) Is it -- is it accurate that

12 your communications with the city manager and the

13 assistant city manager were to notify them that the

14 deposition was going to occur?

10:15 15 **A.** Correct.

16 **Q.** Those weren't information gathering?

17 **A.** No.

18 **Q.** And you spoke to Ms. Dong, it sounds like,

19 about information related to film permits; correct?

10:15 20 **A.** Yes.

21 **Q.** Did you talk to anyone else at the City in an

22 information-gathering capacity in preparation for the

23 deposition?

24 **A.** I believe I did ask some detectives in my

10:16 25 police department whether they had any documents that

1 may have been discoverable pursuant to this lawsuit.

2 Q. So aside from speaking with Ms. Dong about film
3 permits and asking detectives for documents that might
4 be discoverable, did you speak to anyone else to prepare
10:16 5 for your deposition? And from that, I'm excluding just
6 telling people that you were going to be deposed.

7 A. No.

8 Q. I assume your counsel's going to object.
9 How long did you meet with Counsel for
10:16 10 purposes of preparing?

11 MR. MASTER: You are correct. It goes to
12 attorney-client privileged communication, attorney work
13 product, and it's not relevant to the litigation, so I'm
14 instructing him not to answer.

10:17 15 Q. (By Mr. Robinson) Are you going to follow your
16 attorney's instruction not to answer?

17 A. Yes.

18 MR. MASTER: You can certainly ask him how long
19 it took him to prepare for deposition but not in terms
10:17 20 of any length of communications with me.

21 MR. ROBINSON: We can -- we can take it up
22 after, but --

23 Q. (By Mr. Robinson) In preparing for your
24 deposition, did you review any documents that refreshed
10:17 25 your recollection about any pertinent events to this

1 lawsuit?

2 **A.** Well, yes. A lot of the documents were from
3 many years ago, so they refreshed my recollection as to
4 the events that were occurring at that time.

10:17 5 **Q.** And without getting into the substance of any
6 communications you've had with counsel, were you given
7 any information by counsel that was necessary for you to
8 prepare to be the person most qualified on the topics
9 listed?

10:17 10 **A.** No. The only thing -- well, without going into
11 what we specifically talked about, basically, just
12 asking me whether I knew of these issues.

13 **Q.** Fair enough.

14 **A.** Yeah.

10:18 15 **Q.** Let's start with Topic No. 1.

16 You understand that Mr. Zeleny, in the past,
17 has protested within the city of Menlo Park; correct?

18 **A.** Yes.

19 **Q.** What is your best understanding of the nature
10:18 20 of his protests? What does he do during the protests?

21 MR. MASTER: Object. It's vague and ambiguous.
22 Overbroad. You can answer.

23 THE WITNESS: One of the things I think that --
24 I've been here since 2011. Since 2011, there has been
10:18 25 numerous protests by Mr. Zeleny in which he stands at a

1 certain location in the city of Menlo Park, protesting a
2 certain business in the city of Menlo Park with both
3 sign boards and weapons. Those protests have gone on
4 for up to a day at a time.

10:19 5 Q. (By Mr. Robinson) In your experience with --
6 strike that.

7 Both in your experience with Mr. Zeleny
8 individually and as the person most qualified on behalf
9 of the City, you understand that Mr. Zeleny's protests
10:19 10 involve the carrying of unloaded firearms; true?

11 A. They involve the right to carry?

12 Q. No. That they involve him carrying firearms?

13 A. Yes. In the past, some of the protests, he has
14 been armed; correct.

10:19 15 Q. Is Mr. Zeleny permitted to protest in the city
16 of Menlo Park currently while carrying unloaded
17 firearms?

18 MR. MASTER: Subject it's vague and ambiguous
19 and overbroad. Calls for a legal conclusion and,
10:19 20 therefore, speculation.

21 THE WITNESS: Anyone is able to protest in the
22 city of Menlo Park. It's a First Amendment right
23 anybody has, as long as they do so in a nonviolent
24 manner and they conform to all municipal codes, county
10:20 25 ordinances, and state laws.

1 **Q.** (By Mr. Robinson) My question was more
2 specific than that, though. If Mr. Zeleny -- as the
3 person most qualified on behalf of the City of Menlo
4 Park, in relation to these protests, if Mr. Zeleny wants
10:20 5 to go today and protest against NEA and carry unloaded
6 firearms openly, is he allowed to do that within the
7 city of Menlo Park?

8 MR. MASTER: Same objections.

9 You can answer.

10:20 10 THE WITNESS: Our -- the interpretation of the
11 Penal Code is no, he would not be. It is illegal to
12 openly carry unloaded weapons in the state of
13 California.

14 **Q.** (By Mr. Robinson) What would the consequences
10:20 15 be if Mr. Zeleny undertook his protests carrying open,
16 unloaded firearms?

17 **A.** We would look at the situation. We would
18 determine whether we believed a crime was occurring, and
19 if we established that probable cause that a crime was
10:21 20 occurring, an arrest could be made.

21 **Q.** Who would be the person on the behalf of the
22 City of Menlo Park Police Department to decide whether
23 or not to make an arrest in that situation?

24 **A.** Police officer.

10:21 25 **Q.** So assuming that Mr. Zeleny went to NEA today

1 or some other day and resumed his protests while openly
2 carrying unloaded firearms, he would be subject to
3 arrest; true?

4 A. That's true.

10:21 5 Q. Is there any way in which Mr. Zeleny can engage
6 in that protest through permits or some other process
7 where he could do those protests while openly carrying
8 firearms and not be subject to a risk of arrest?

9 A. There is an exception to the Penal Code that
10:22 10 allows someone who is in an authorized production to
11 carry weapons and if Mr. Zeleny had a authorized
12 production permit from the City, then -- and as long as
13 he fulfilled the rest of the requirements in that
14 permitting process, he would be allowed to do so.

10:22 15 Q. When you're talking about a production permit,
16 is that a film production permit?

17 A. Correct.

18 Q. Other than getting a film production permit
19 from the City, are there any other circumstances in
10:22 20 which Mr. Zeleny could conduct his protests involving
21 the use of firearms without being subject to arrest?

22 A. I'm not aware of any.

23 Q. So the film production permit is basically the
24 only option within the city?

10:23 25 A. Well, it seems to be one of the exceptions to

1 the Penal Code.

2 Q. Just for practical purposes, if Mr. Zeleny
3 wants to protest and he wants to carry unloaded firearms
4 during the protests, aside from getting a film
10:23 5 production permit, is there any other way for him to do
6 that within Menlo Park?

7 MR. MASTER: I'll subject to the extent it goes
8 outside the scope of this deposition. It calls for
9 speculation, lacking foundation and a legal conclusion.

10:23 10 But you can answer.

11 THE WITNESS: I'm not aware of any -- there's
12 no such thing as an open carry permit for the city.

13 Q. (By Mr. Robinson) So you're not aware of any
14 other means by which Mr. Zeleny could resume his
10:23 15 protest, other than getting a permit?

16 A. Well, there are other exceptions to the Penal
17 Code. You'd have to look at that. I mean, if he was a
18 retired military and going -- doing a parade down the
19 street, he could have a weapon.

10:23 20 There's other -- there's other -- if he was a
21 police officer, he could have a weapon. There's other
22 exceptions.

23 Q. Are you aware of any other exceptions that
24 would apply in the situation of Mr. Zeleny's protests,
10:24 25 other than the film permit exception?

1 **A.** I don't know. I don't know what his background
2 is.

3 **Q.** Is it your understanding that Mr. Zeleny is a
4 retired military officer?

10:24 5 **A.** I don't know that.

6 **Q.** Do you believe him to be a retired police
7 officer?

8 **A.** I don't know that either.

9 **Q.** Has he ever conducted parades within the city
10:24 10 of Menlo Park?

11 **A.** Not to my knowledge.

12 **Q.** Let's be a little bit more specific about it.
13 Are there any other -- I understand that the statute has
14 exceptions. We'll get into the statute a little bit
10:24 15 later.

16 Are there any other mechanisms within the city
17 of Menlo Park, other than getting a film permit, that
18 would ensure that Mr. Zeleny could conduct his protests
19 without being arrested?

10:24 20 **A.** None that I'm aware of.

21 **Q.** Are you familiar with the process for special
22 events permits within the city of Menlo Park?

23 **A.** Yes.

24 **Q.** What is a special event?

10:25 25 **A.** A special event is defined by the City as any

1 event that is one that would cause the applicants to
2 encroach upon the public right-of-way to block streets
3 that have a number of people, more than 100, that would
4 require police presence and/or response or would require
10:25 5 or would deal with the noise ordinance if it was very
6 noisy and those things that are, you know, special by
7 their very nature; they're not a normal day-to-day
8 occurrence.

9 Q. Is that the City's -- strike that.

10:26 10 Was that the City's definition, to the best of
11 your knowledge, of a special event?

12 A. To the best of my recollection.

13 Q. Is that definition of a special event written
14 down anywhere?

10:26 15 A. There is a form on the website that gives a
16 frequently asked questions, and it outlines some of the
17 factors that would cause one to need a special event
18 permit.

19 Q. Other than the frequently asked questions
10:26 20 portion of the City's website, is there any other place
21 where the definition of a special event is written down?

22 A. Not that I'm aware of.

23 Q. One part of your answer was that the event is
24 special by its very nature. Do you recall saying that?

10:27 25 A. I do.

1 Q. What does that mean?

2 A. What that means is someone would not need a
3 special event for something that is -- that they're
4 doing in the course of the business or is covered by
10:27 5 some other business permit or other type of permit
6 that's allowing them to do what they're doing.

7 Q. Approximately how many -- strike that.

8 That portion of the deposition -- that portion
9 of the definition of special event relating to something
10:27 10 that's special by its very nature, is that piece of it
11 written down anywhere?

12 A. No.

13 Q. Is there any way for the public to learn of
14 that requirement?

10:28 15 A. If they were to apply for one or call and ask a
16 question.

17 Q. So this special-by-its-very-nature requirement
18 is not part of the City's website?

19 A. That's correct. If someone already had a
10:28 20 permit or an encroachment permit for something else,
21 they would not need a special events permit on top of
22 that.

23 Q. So if I'm understanding right, is it your
24 testimony that this criteria, that the event be special
10:28 25 by its very nature, means an event that doesn't have a

1 different kind of permit?

2 **A.** That is -- that's correct. That is outside the
3 permission that an entity or a person already had.

4 **Q.** Other than being something outside of the
10:28 5 permission that a person or entity already has, does the
6 portion of the definition relating to an event being
7 special by its very nature mean anything else?

8 **A.** No.

9 **Q.** So the special-by-its-very-nature requirement
10:29 10 just means you don't have another kind of permit that
11 lets you do this.

12 **A.** Correct.

13 **Q.** You understood that Mr. Zeleny applied for a
14 special events permit?

10:29 15 **A.** Yes.

16 **Q.** Were you aware at the time Mr. Zeleny applied
17 for his special events permit that he had some other
18 kind of permit that would allow his protests?

19 **A.** No.

10:29 20 **Q.** So by the definition you just gave me,
21 Mr. Zeleny's protest was special by its very nature;
22 true?

23 MR. MASTER: Objection. Vague and ambiguous.
24 Overbroad.

10:29 25 You can answer.

1 THE WITNESS: Repeat it.

2 Q. (By Mr. Robinson) By the definition you just
3 gave me, Mr. Zeleny's special event that he was
4 proposing, because he didn't have some other kind of
10:29 5 permit, would meet your definition of an event that was
6 special by its very nature; true?

7 A. Believe the City's -- as I stated, I believe
8 the City's stats on that was that you don't need a
9 special events permit to, in fact, protest.

10:30 10 Q. At this point -- let me step back a second.
11 You understand that there is an exception to the
12 California Penal Code sections about open carry for
13 entertainment events; true?

14 A. For an authorized production; correct.

10:30 15 Q. Are you aware of the exception that applies to
16 authorized participants in entertainment events?

17 A. An authorized event, yes.

18 Q. Okay.

19 Is there any other mechanism by which the City
10:30 20 of Menlo Park authorizes events, other than the special
21 event permit process?

22 A. The film permit.

23 Q. Okay.

24 So the two options, essentially, are film
10:30 25 permit and special events permit for events; true?

1 MR. MASTER: I'll just object to the extent
2 that you're asking him to potentially answer questions
3 that go beyond the scope of his designation.

4 But to the extent he has an understanding, he
10:31 5 may.

6 THE WITNESS: I'm sorry.

7 Q. (By Mr. Robinson) Let me step back for a
8 second. It's the City's view -- and I'm asking about
9 Item 4 on Attachment 1, the defendant's interpretation
10:31 10 of the California statutes.

11 It's the City's position that in order to be an
12 authorized participant either in a video production or
13 an entertainment event, the City has to authorize the
14 event itself?

10:31 15 A. That's correct.

16 Q. And the way in which the City would authorize
17 an event of the type that Mr. Zeleny was seeking to
18 conduct would be either through a special events permit
19 or a film permit; right?

10:31 20 A. Those are the only two that I'm aware of.

21 Q. Okay.

22 And at the time Mr. Zeleny applied for the
23 special events permit, you're aware that he didn't have
24 a film permit; correct?

10:32 25 A. Correct.

1 **Q.** So by your definition of an event that is
2 special by its very nature, I think you told me that
3 means an event that isn't otherwise permitted in some
4 way; right?

10:32 5 **A.** Correct.

6 **Q.** So Mr. Zeleny's event, when he applied for a
7 special events permit, he didn't have a film permit;
8 true?

9 MR. MASTER: Objection. Asked and answered.

10:32 10 You just asked that two questions ago. We're
11 going to be here all day if you continue that.

12 You can answer it one more time.

13 THE WITNESS: Yes.

14 **Q.** (By Mr. Robinson) So by your definition of an
10:32 15 event that's special by its very nature, because
16 Mr. Zeleny didn't have a film permit, his event would
17 have met the definition of a special event; true?

18 MR. MASTER: Objection. Asked and answered.
19 Argumentative.

10:32 20 **Q.** (By Mr. Robinson) You can go ahead and answer.

21 MR. MASTER: Go ahead.

22 THE WITNESS: Yes, but there's, obviously,
23 other criteria besides just that.

24 **Q.** (By Mr. Robinson) This
10:33 25 special-by-its-very-nature criteria, you said, is not on

1 the website; correct?

2 A. Well, I would assume -- yeah. It's not.

3 Q. Is there any reason why it's not on the
4 website?

10:33 5 A. Because it's commonsense. If someone had a
6 permit or the permission in some other fashion to do
7 something, they wouldn't need a special event permit on
8 top of that unless it went beyond their current
9 permissions.

10:33 10 Q. Other than this criteria that we've just talked
11 about, the special by its very nature, what are the
12 criteria that the City uses to decide whether or not to
13 grant a special event permit?

14 A. The criteria to grant one?

10:33 15 Q. To grant or deny. What's the decision based
16 on?

17 A. Well, there is an entire process that is in
18 place for the permit to basically articulate [sic]
19 throughout the City and touch every department that
10:34 20 would be affected, and there is a person who's
21 designated in every department to examine the permit to
22 see whether or not what is being requested to be done
23 is, number one, feasible; and, number two, what would be
24 required as controls of that event. In other words,
10:34 25 would they need police presence? Would they need street

1 closures, et cetera?

2 Q. Are there -- are there any written -- is there
3 any written list of criteria or requirements or factors
4 that are considered by the various City departments in
10:34 5 deciding whether or not to grant a special events
6 permit?

7 A. The event permit itself has, basically, a list
8 of criteria that's needed, and the departments would
9 look at that criteria to see whether or not the permit
10:35 10 would either be denied or granted or if it was granted
11 with conditions such as, you know, police presence,
12 closures of streets, sound provisions, number of people;
13 things as mundane as, you know, if they needed
14 porta-potties. There's many different types of factors
10:35 15 that would be looked at by different departments.

16 Q. Are all of the factors that would be looked at
17 by the various departments listed on the permit
18 application itself?

19 A. I'm not sure if every single factor is listed.

10:35 20 Q. Is there any list, written list of factors?

21 A. Well, the -- if you look at the actual
22 application, it does have some factors that are listed
23 on it.

24 Q. The factors that are not listed on the
10:35 25 application, are those listed somewhere else?

1 **A.** I'm not sure.

2 **Q.** Is there someone else within the City of Menlo
3 Park who would know whether the factors for granting or
4 denying a special events permit that are not included on
10:36 5 the application itself are written down?

6 **A.** No.

7 **Q.** Nobody within the City of Menlo Park is aware
8 of whether these additional factors are written down?

9 MR. MASTER: Objection. Asked and answered.

10:36 10 Argumentative.

11 **Q.** (By Mr. Robinson) You can answer.

12 **A.** The answer would be every department has its
13 own list of requirements of what they're looking at
14 specifically to their department, and I assume that
10:36 15 every department -- or I know every department would
16 have somebody who would be making that determination.

17 **Q.** Are the lists maintained by the various
18 departments within the City written down?

19 **A.** I don't know the answer to that for every
10:36 20 department.

21 **Q.** Are the factors considered by the police
22 department written down?

23 **A.** They are on a checklist on the application
24 process, but there is no, like, you know, codified list
10:36 25 of you must do X, Y, Z, because every situation, every

1 event, is going to be different.

2 Q. When you refer to a checklist, are you
3 referring to the checklist on the permit application
4 itself?

10:37 5 A. Correct.

6 Q. Okay.

7 Beyond completing the checklist on the permit
8 application itself, are there other factors that the
9 police department considers in deciding whether or not
10 to approve a special events permit?

11 A. It would depend on what the special event was
12 asking to do.

13 Q. So the factors that you would consider vary
14 event by event?

10:37 15 A. From the police department specifically, it
16 would be public -- mostly -- almost all public safety
17 factors.

18 Q. What public safety factors are considered?

19 MR. MASTER: Objection. Vague and ambiguous.
10:37 20 Overbroad. Incomplete hypothetical.

21 You can answer.

22 THE WITNESS: Traffic control, crowd control,
23 noise ordinances, safety to the general public; things
24 of that nature.

10:38 25 Q. (By Mr. Robinson) When you say "things of that

1 nature," are there other factors beyond traffic, crowd
2 control, and safety to the general public?

3 **A.** As far as the -- what the police department is
4 looking for, those are pretty much what we're looking
10:38 5 for.

6 **Q.** Are there any objective standards that you
7 follow, or is it sort of a case-by-case decision about
8 whether it would impact traffic or safety?

9 MR. MASTER: Objection. Vague and ambiguous.

10:38 10 Unintelligible.

11 THE WITNESS: I can't answer that question.

12 **Q.** (By Mr. Robinson) Okay.

13 Are there objective standards that you, as the
14 police department, apply in deciding whether or not to
10:38 15 approve a special events permit?

16 MR. MASTER: Objection. Asked and answered.
17 Vague and ambiguous.

18 THE WITNESS: The answer is yes.

19 **Q.** (By Mr. Robinson) What are the objective
10:39 20 criteria that you consider?

21 **A.** What I already stated. It would depend on
22 whether -- and it's difficult to answer your question,
23 because without a hypothetical of what it was --
24 because every special event is going to be different.

10:39 25 Some special events want to close streets; others want

1 to close sidewalks; others want to have a large
2 gathering in a front lawn of a house.

3 It would depend on the actual event itself on
4 what we -- the criteria we would be using to either --
10:39 5 to deny and/or approve.

6 Q. Do the criteria change depending on the event?

7 A. Yes, they -- no. The criteria don't, but it
8 depends on what part of the -- what criteria we are
9 using to examine it depends on what the event is asking
10:39 10 to do. In other words, a foot race down downtown is
11 much different than a block party.

12 Q. And beyond the criteria of traffic, crowd
13 control, and safety to the general public, there are no
14 other criteria that would apply in the police department
10:40 15 to approval or denial of a special event permit?

16 MR. MASTER: Objection. Asked and answered.
17 Argumentative.

18 Go ahead.

19 THE WITNESS: Obviously, the -- what was going
10:40 20 on during this event would have to follow local
21 municipal code ordinances, county ordinances, state law,
22 federal law.

23 Q. (By Mr. Robinson) Are the factors or criteria
24 that you've described to me, which now include
10:40 25 compliance with law, in addition to the others that you

1 mentioned, are those all of the factors that the police
2 department considers in deciding whether to approve or
3 deny a special event permit?

4 **A.** Yes.

10:41 5 **Q.** Let's start with the traffic. How do you
6 decide -- you generally said that traffic control is one
7 of the things that you consider. Can you expand on what
8 you mean by "traffic control."

9 **A.** Traffic impact.

10:41 10 **Q.** Is there some level of traffic impact that
11 would cause an event to be denied a permit?

12 **A.** Perhaps.

13 **Q.** What is the level?

14 MR. MASTER: I'm just going to object. The
10:41 15 question is vague and ambiguous. It's an incomplete
16 hypothetical and, therefore, calls for speculation.

17 You can answer.

18 THE WITNESS: It would depend on where the
19 event was planning to be held and the type of street or
10:41 20 location that it was trying to be held on. It's
21 impossible to say exactly without some more to your
22 question to answer it.

23 **Q.** (By Mr. Robinson) What I'm trying to get at is
24 whether there's an objective standard. So you have this
10:42 25 traffic impact and, therefore, your permit is denied.

1 Is there some objective standard in assessing
2 the traffic impact?

3 MR. MASTER: Object. Vague and ambiguous.
4 Overbroad.

10:42 5 THE WITNESS: So it would depend, again, on
6 what was being requested, where it was being requested.
7 We would work with other departments, such as our Public
8 Works traffic division, and there would have to be a
9 discussion within the City on whether or not traffic
10:42 10 control was needed, could an event be done in this
11 location without a major -- major impact into traffic.

12 **Q.** (By Mr. Robinson) The considerations that you
13 just talked about regarding traffic impact, are those
14 considerations written down anywhere?

10:43 15 **A.** Well, they are mentioned in the application for
16 special event permit.

17 **Q.** Other than being mentioned in the special event
18 permit -- strike that.

19 Other than what's written in the permit
10:43 20 application itself, are the factors that the City would
21 consider relating to traffic control or traffic impact
22 written down anywhere?

23 **A.** No.

24 **Q.** Do the factors that you consider vary from
10:43 25 event to event?

1 **A.** Yes.

2 **Q.** In working with the other City departments to
3 assess the traffic impact of a proposed event, is there
4 any level of discretion within the City to decide
10:43 5 whether it would have too much of a traffic impact?

6 **A.** Yes, there's discretion.

7 **Q.** You mentioned before a major impact.

8 What is a major impact on traffic?

9 **A.** It's not quantifiable.

10:44 10 **Q.** Is that an assessment that's also in the
11 discretion of the City personnel who consider the
12 application, whether it's a major impact or not?

13 **A.** In discussions with other departments, yes.

14 **Q.** And what -- moving to crowd control.

10:44 15 Is crowd control another of those factors that
16 varies event to event?

17 **A.** Yes.

18 **Q.** And the criteria that you would use to assess
19 the event depends on what type of event it is; correct?

10:44 20 **A.** Certainly.

21 **Q.** Is that also true of safety to the general
22 public?

23 **A.** That it depends on the --

24 **Q.** That the criteria you consider in analyzing
10:45 25 whether an event poses a safety risk to the general

1 public depend on what type of event it is?

2 **A.** Of course.

3 **Q.** And is it accurate that those other factors,
4 crowd control and safety to the general public, also
10:45 5 involve some level of discretion on the part of the
6 police department and other City entities that are
7 involved in processing the application?

8 **A.** Certainly, because we could put conditions to
9 mitigate those issues, if necessary.

10:45 10 **Q.** How long has the City had a special events
11 permitting process in place?

12 **A.** The -- there was a process prior to me arriving
13 in the City in 2011, but I am aware that in 2012 and the
14 beginning of 2013, a new process was put into place.

10:46 15 **Q.** Is the process that you've been describing up
16 until this point the process that was put in place in
17 2012 or 2013?

18 **A.** Yes.

19 **Q.** Could you estimate the number of special event
10:46 20 permit applications the City has received since it put
21 this process in place in 2012 or 2013.

22 **A.** I would estimate -- and this is just by looking
23 at the discovery, you know, over a hundred.

24 **Q.** How many of those -- if you could estimate, how
10:46 25 many of those were denied?

1 **A.** I don't -- I actually don't have an estimation
2 how many were denied.

3 **Q.** Did you see any documents in your review of the
4 files of any other than Mr. Zeleny's that were denied?

10:47 5 **A.** Yes.

6 **Q.** You just can't estimate how many?

7 **A.** Correct. I don't -- I don't remember how many
8 exactly were.

9 **Q.** What was the general nature of the events that
10:47 10 you recall being denied?

11 **A.** I don't know.

12 **Q.** Of those hundred or so special event permit
13 applications, how many were you directly involved with?

14 **A.** Me, directly?

10:47 15 **Q.** Correct.

16 **A.** Maybe half a dozen to a dozen.

17 **Q.** You were directly involved in Mr. Zeleny's
18 permit application; right?

19 **A.** Correct.

10:47 20 **Q.** What are some of the others that you were
21 directly involved with?

22 **A.** When I was a patrol commander, I was involved
23 in some of the permitting process for bicycle races,
24 foot races, parades, block parties.

10:48 25 **Q.** So at some point, you were promoted to police

1 chief; right?

2 **A.** Correct.

3 **Q.** When did that happen?

4 **A.** In January of 2018.

10:48 5 **Q.** What was your position before you were promoted
6 to police chief?

7 **A.** Police commander.

8 **Q.** Is that different than patrol commander?

9 **A.** Well, police commander is the general rank.

10:48 10 Patrol commander is the division that I was assigned to.

11 **Q.** Before moving on, we talked about the criteria
12 for special event permits that are used within the
13 police department. Are you aware of any criteria that
14 are used by other City departments in assessing whether
10:49 15 to grant or deny a special event permit?

16 **A.** I'm aware of some of the criteria that are used
17 by other departments.

18 **Q.** What are those criteria?

19 **A.** For Community Services, who is the department
10:49 20 that spearheads the entire process, one of the criteria
21 they're looking for is that it is an event for the
22 public, not a private event; for a special event that is
23 for the good of the public.

24 From the Department of Public Works, they're
10:49 25 looking for things such as: Are barricades needed?

1 Would they have to have extra personnel on during this
2 event?

3 They would be -- also be looking for hygiene
4 issues or personal hygiene such as porta-potties and/or
10:50 5 trash collection; things of those nature --

6 (Reporter interruption.)

7 MR. MASTER: Slow down.

8 THE WITNESS: The Public Works Department and
9 the Transportation Department would specifically be
10:50 10 looking for traffic issues.

11 Q. (By Mr. Robinson) So we've covered a lot
12 there, but in general categories, we have Community
13 Service and the requirement of a public event; Public
14 Works, which considers barricades, staffing, and hygiene
10:50 15 issues, such as porta-potties; and then Traffic, which
16 considers traffic issues.

17 Are there any other criteria that you're aware
18 of for granting or denying a special event permit by the
19 other departments?

10:50 20 A. Community service also deals with the rental --
21 sorry -- the rentals of City facilities.

22 THE VIDEOGRAPHER: Just a quick reminder to
23 turn off cell phones while we're on the record. I'm
24 picking up some low-level static.

10:51 25 Q. (By Mr. Robinson) Aside from the criteria

1 considered by the police department and the criteria
2 you've just listed for the other departments, are you
3 aware of any other criteria that are considered?

4 **A.** Not that I'm aware of.

10:51 5 **Q.** Are the criteria that you just mentioned
6 regarding the other departments written down anywhere?

7 **A.** There is a checklist on the application.

8 **Q.** Aside from the checklist on the permit
9 application, are those criteria that you mentioned for
10:51 10 the other departments written down anywhere?

11 **A.** I don't know.

12 **Q.** Is there someone else on behalf of the City who
13 would know?

14 **A.** I would assume that whoever is the contact
10:52 15 person in that department may have something written. I
16 don't know the answer to that.

17 **Q.** Is there anything written that's accessible to
18 the public about the criteria that are considered?

19 **A.** I believe everything that's on the website is
10:52 20 what is accessible. I'm not sure if there's anything
21 other than that.

22 **Q.** One of the factors you mentioned was whether
23 the event is for the good of the public.

24 Do you recall saying that?

10:52 25 **A.** Yes.

1 **Q.** What does that mean?

2 **A.** What that means is the genesis of this creation
3 of this permitting process came specifically because
4 there were residents who were attempting to close down
10:52 5 entire streets for private birthday parties, et cetera.
6 So one of the criteria is you could close down your
7 street if it was, for instance, a block party that
8 everybody was invited to, but not for just for a private
9 party or a private event.

10:53 10 **Q.** Is there -- to your knowledge, both
11 individually and as the person most knowledgeable on
12 behalf of Menlo Park, is there any objective standard
13 that the City uses to measure whether an event is for
14 the good of the public or not?

10:53 15 MR. MASTER: Objection. Asked and answered,
16 vague and ambiguous, and overbroad.

17 You can answer.

18 THE WITNESS: If it's -- if the public is
19 invited, and it is a community-type event where it is
10:53 20 not just for the private use of one person or one
21 resident.

22 **Q.** (By Mr. Robinson) Who makes the decision about
23 whether an event is for the good of the public in terms
24 of considering a special event permit?

10:54 25 **A.** Community Services.

1 **Q.** Is there a particular person at Community
2 Services?

3 **A.** It would vary, depending on who is currently
4 there when the intake of the permit comes in.

10:54 5 **Q.** The standard that you mentioned in your
6 previous answer about an event being open to the public,
7 comprising a community event, do you know if that
8 standard is written down somewhere?

9 **A.** That is specifically stated in the application
10:54 10 process.

11 **Q.** When you refer to the application process,
12 you're referring to the application that someone fills
13 out; right?

14 **A.** Yes.

10:55 15 **Q.** How long is a special event allowed to last
16 within the city of Menlo Park?

17 **A.** That would depend on the event.

18 **Q.** Is there any fixed time limit? Events can be
19 10 days or 20 days or two months? Is there any
10:55 20 objective limit on how long it can last?

21 **A.** No. It would depend on the event.

22 **Q.** How does the City decide what kind of time
23 frame to impose on an event?

24 MR. MASTER: Objection. Vague. Ambiguous.
10:55 25 Incomplete hypothetical. Calls for speculation.

1 You can answer.

2 THE WITNESS: It would depend on the type of
3 event. Time, place, and manner is one of the things
4 that we are looking at, and it depends -- it would

10:55 5 depend on whether the event had a large-scale impact or
6 not. And so it would -- it would -- again, it's
7 difficult to answer your question without having a
8 specific event that you're asking about.

9 **Q.** (By Mr. Robinson) Is the length of time an
10:56 10 event will be allowed determined on an event-by-event
11 basis?

12 **A.** Yes.

13 **Q.** Is there any objective standard that you're
14 aware of for deciding how long an event can last?

10:56 15 MR. MASTER: Objection. Vague, ambiguous, and
16 overbroad.

17 You can answer.

18 THE WITNESS: Go back to the time, place, and
19 manner requirements that we're looking at, depending on
10:56 20 what the impact of everything else that I've already
21 talked about would be.

22 **Q.** (By Mr. Robinson) What I'm trying to get at is
23 if I'm a citizen and I want to put on a special event,
24 is there anywhere that I could go to figure out what the
10:56 25 criteria that the City is using are so that I can

1 satisfy the criteria and have my permit application
2 granted?

3 MR. MASTER: It's a different question. It's
4 vague and ambiguous and overbroad.

10:56 5 You can answer.

6 THE WITNESS: You would have to tell us what
7 kind of event and where you were doing it before we
8 could answer that question.

9 Q. (By Mr. Robinson) So the criteria that would
10:57 10 be used depend on what type of event and where; is that
11 accurate?

12 A. And how long; correct.

13 Q. But is that -- okay.

14 So the criteria that the City would use in
10:57 15 assessing an event depend on what type of event, where
16 it's going to be conducted, and how long; correct?

17 A. And you would have to include all the impacts
18 that I've already talked about; that would also be what
19 we would be looking at.

10:57 20 Q. Okay.

21 So my question is just whether the factors that
22 are considered by the City vary based on the type of
23 event, the location, and the time.

24 A. And the factors I've already discussed: The
10:57 25 impact on public safety, traffic, crowd control;

1 everything else that I've already talked about, yes.

2 Q. So the factors that you consider vary based on
3 the factors that you consider that you just told me?

4 MR. MASTER: Whoa. Objection. Vague,
10:58 5 ambiguous, unintelligible.

6 I don't understand the question.

7 If you understand it, go ahead.

8 THE WITNESS: I don't.

9 Q. (By Mr. Robinson) Okay.

10:58 10 We talked for quite a while about factors that
11 the City considers in deciding whether to grant or deny
12 a permit application; correct?

13 A. Yes.

14 Q. You recall our discussion about that?

10:58 15 A. Yes.

16 Q. We talked about a number of factors and various
17 departments; right?

18 A. Correct.

19 Q. And my question to you just now was: The
10:58 20 factors that you consider vary based on where the event
21 is, what type of event it is, and how long it's going to
22 last?

23 And I think your response was: They vary based
24 on that and all the other factors that I just told you.

10:58 25 And I agree that's unintelligible. I'm just

1 trying to figure out what your answer meant.

2 So maybe we can just start from the factors
3 considered by the City vary based on the nature of the
4 event, the location, and the timeline of the event; is
10:58 5 that accurate?

6 **A.** Yes.

7 **Q.** And the factors that may be considered are the
8 factors that you've told me for the various departments
9 a few minutes ago; right?

10:59 10 **A.** Yes.

11 **Q.** And those factors are discretionary factors
12 that are considered in consultation with the various
13 departments; right?

14 **A.** In some cases, yes.

10:59 15 **Q.** Which of the factors are, other than
16 discretionary factors, considered in consultation with
17 the various departments?

18 **A.** Well, there are the factors that are
19 specifically listed on the application.

10:59 20 **Q.** Okay.

21 I see. So some of the factors, like you have
22 to have insurance and those types of factors are not
23 discretionary.

24 **A.** Correct.

10:59 25 **Q.** The other factors that we've talked about

1 previously in your deposition, those are discretionary
2 factors discussed or addressed among the various
3 departments?

10:59 4 MR. MASTER: Object. It's vague, ambiguous,
5 and it's overbroad.

6 You can answer.

7 THE WITNESS: And it would be -- yes, based on
8 time, manner, and place. That's what we would have to
9 look at.

11:00 10 MR. ROBINSON: Why don't we mark this as
11 Exhibit 30, please.

12 (Exhibit 30 was marked for identification.)

13 Q. (By Mr. Robinson) For the record, Exhibit 30
14 is two pages, Bates marked in the bottom right corner

11:00 15 MP1822 to 1823; correct?

16 A. Was that to me?

17 Q. Yes.

18 A. Yes.

19 Q. Do you recognize Exhibit 30?

11:01 20 A. I do.

21 Q. What is it?

22 A. It's a special event permit flow chart that
23 was -- that is placed on the website.

24 Q. Does it generally describe the process of
11:01 25 processing a permit application for a special event

1 permit?

2 **A.** Yes.

3 **Q.** So the event application initially goes to Matt
4 Milde?

11:01 5 **A.** He no longer works for the City of Menlo Park,
6 so I'm not sure who it would go to now, but it would go
7 to somebody at Community Services.

8 **Q.** And does that person generally conduct an
9 initial screening process?

11:01 10 **A.** Yes.

11 **Q.** They decide if the application is complete as
12 part of the job; right?

13 **A.** That's part of the job, yes.

14 **Q.** And they would then -- if it was not complete,
11:02 15 the Community Services person would write back to the
16 applicant and say it's not complete; true?

17 **A.** Yes.

18 **Q.** In the ordinary process of handling a permit
19 application.

11:02 20 **A.** Yes.

21 **Q.** And assuming that the application makes it
22 through that first stage, then it would be circulated to
23 the various departments listed; correct?

24 **A.** Correct.

11:02 25 **Q.** On behalf of the police department, I'm looking

1 at Step C, staff internal review. Let me step back a
2 second.

3 Is that the collaborative process that you
4 talked about just a few minutes ago where the

11:02 5 departments talk to each other and decide whether it has
6 an impact for their department?

7 A. Yes.

8 Q. So that's Step C of this flow chart.

9 A. If you're -- if that's the way you're putting
11:02 10 it in order, yes.

11 Q. I'm just referring to where it says Step C --

12 A. Yes.

13 Q. -- staff internal --

14 A. You're correct.

11:02 15 Q. -- internal review. Got it.

16 And for the police department, it lists Matt
17 Ortega.

18 Do you see that?

19 A. I do.

11:03 20 Q. Who is Sergeant Ortega? Is he -- sorry. Go
21 ahead.

22 A. He is now a retired police officer.

23 Q. Is there someone else who's taken over this
24 role in handing special event permit applications?

11:03 25 A. Yes.

1 **Q.** Who is it?

2 **A.** Sergeant Jaime Romero, R-o-m-e-r-o.

3 **Q.** Who was the person in that role who handled the
4 special event permit applications in 2015?

11:03 5 **A.** I believe it was still Sergeant Ortega. I'm
6 not sure. I don't recall when exactly he retired.

7 **Q.** You weren't, generally, the person who handled
8 special event permit applications?

9 MR. MASTER: Objection. Vague and ambiguous.

11:03 10 **Q.** (By Mr. Robinson) In the 2015 time frame, were
11 you the person who ordinarily would handle special event
12 permit applications for the police department?

13 **A.** No. I would be advised of them and get
14 involved if assistance was needed.

11:04 15 **Q.** How did you decide whether assistance was
16 needed?

17 **A.** It was requested.

18 **Q.** Was your assistance requested in processing
19 Mr. Zeleny's permit application in 2015 and 2016?

11:04 20 **A.** Yes.

21 **Q.** Who requested your assistance?

22 **A.** Originally, Mr. Milde, and then Sergeant
23 Ortega.

24 **Q.** Did Mr. Milde relate to you why he was
11:04 25 requesting your assistance?

1 **A.** Yes.

2 **Q.** What did he tell you?

3 **A.** That the application was extremely unusual, and
4 he had no experience in dealing with an application of
11:05 5 this type.

6 **Q.** Were there more senior people in the Community
7 Services division of the City at that time? People more
8 senior than Matt Milde.

9 **A.** Yes.

11:05 10 **Q.** Do you have any understanding of why Mr. Milde
11 didn't ask someone who was more senior in that
12 department?

13 MR. MASTER: Objection. Asks -- it assumes
14 facts not in evidence. Calls for speculation.

11:05 15 You can answer.

16 THE WITNESS: I don't know whether he did or
17 not.

18 **Q.** (By Mr. Robinson) Did Mr. Milde tell you that
19 he was reaching out to you, in part, because the police
11:05 20 department had experience dealing with Mr. Zeleny?

21 **A.** Yes. He asked whether we knew who Mr. Zeleny
22 was and whether we had experience with him, and the
23 answer was yes.

24 **Q.** So what was your role in dealing with

11:06 25 Mr. Zeleny's special event permit application in 2015

1 and 2016?

2 **A.** My role was to forward it to the city manager's
3 office and the city attorney's office.

4 **Q.** Other than Mr. Zeleny's permit application,

11:06 5 have you ever forwarded another special event permit

6 application to the city manager and city attorney?

7 **A.** No.

8 **Q.** Okay.

9 Why did you forward Mr. Zeleny's permit

11:06 10 application to the city manager and city attorney?

11 **A.** Based on the nature of the application and what
12 was being contemplated by Mr. Zeleny as far as the open
13 carry of weapons and the public safety issues that would
14 ensue.

11:07 15 **Q.** Are you aware of any -- excuse me.

16 Are you aware of any other permit application
17 in the history of the permit application process that
18 was forwarded to the city manager and the city attorney
19 before an appeal other than Mr. Zeleny's?

11:07 20 **A.** Yes.

21 **Q.** How many?

22 **A.** Me, personally? At least one.

23 **Q.** What did that relate to?

24 **A.** To a bicycle race through the city.

11:07 25 **Q.** And that was before any appeal?

1 **A.** Correct.

2 **Q.** Why did you forward the bicycle race to the
3 city manager and city attorney?

4 **A.** Because of the nature of the route they were
11:07 5 proposing and the major impact to traffic and road
6 closures.

7 **Q.** And the -- I don't want to answer for you, so
8 let me just ask you: The reason that you forwarded
9 Mr. Zeleny's application was what?

11:08 10 MR. MASTER: Objection. Asked and answered.
11 You literally just asked him that question.

12 MR. ROBINSON: I'd appreciate it if we keep the
13 speaking objections to a minimum. I understand your
14 objections, and I understand that you have every right
11:08 15 to make them as often as you want, but they're getting
16 lengthy, and they're taking time.

17 MR. MASTER: That wasn't a lengthy one. I just
18 told you, I'm not instructing him not to answer, but you
19 literally just asked him that question two minutes ago.

11:08 20 I'm giving you every opportunity to take his
21 deposition in both capacities. Let's limit the
22 duplicative questions.

23 Go ahead.

24 **Q.** (By Mr. Robinson) You can answer.

11:08 25 **A.** I'm sorry. Say it again.

1 **Q.** Why did you forward Mr. Zeleny's permit
2 application?

3 **A.** Because of the nature -- the unusual nature of
4 the application and the fact that the request was to
11:08 5 openly carry weapons in public and the public safety
6 issues that would be present.

7 **Q.** In what way was Mr. Zeleny's permit application
8 unusual?

9 **A.** I've never seen a permit of that nature -- I'm
11:09 10 sorry -- permit application of that nature.

11 **Q.** When you say "application of that nature," what
12 do you mean?

13 **A.** The event contemplated by Mr. Zeleny was
14 indefinite and requested the carry of open weapons, and
11:09 15 I've never seen a permit asking for the -- or requesting
16 the carrying of open weapons.

17 **Q.** You mentioned public safety. What were the
18 public safety issues that caused you to forward the
19 application to the city manager and city attorney?

11:09 20 **A.** Because of our experience with Mr. Zeleny and
21 the fact that he has had openly carried weapons before
22 and numerous rounds of ammunition. It would not take
23 very long for him to load a weapon and begin shooting.

24 **Q.** How many times, to your knowledge, has the
11:10 25 police department interacted with Mr. Zeleny in the

1 course of his protests?

2 A. I would have to estimate. I don't know for --
3 exactly.

4 Q. Dozens of times?

11:10 5 A. Perhaps a dozen is more accurate.

6 Q. In all those dozens of times, have your
7 officers reported that Mr. Zeleny threatened anyone with
8 his weapons?

9 A. I said dozen, not dozens.

11:10 10 Q. In the dozen times that you've estimated, have
11 your officers ever reported that Mr. Zeleny threatened
12 anyone?

13 A. No.

14 Q. Have they ever reported that he did anything
11:10 15 that was inconsistent with public safety?

16 MR. MASTER: Objection. Vague and ambiguous.

17 THE WITNESS: I don't -- that's a difficult
18 question to answer.

19 Q. (By Mr. Robinson) Have there been any police
11:10 20 reports that you're aware of -- strike that.

21 Are you aware of any instance during
22 Mr. Zeleny's protests where he did anything that you
23 would consider unsafe?

24 A. Me personally? Or professionally?

11:11 25 Q. Why don't we say on behalf of the City of Menlo

1 Park.

2 **A.** All right.

3 The -- professionally, from the City's
4 perspective, the open carry of weapons with numerous

11:11 5 rounds of ammunition already in magazines ready to be
6 loaded, yes, that would be unsafe.

7 **Q.** Part of the reason that you referred

8 Mr. Zeleny's permit application to the City of Menlo

9 Park is because you -- or to the city manager and the

11:11 10 city attorney is because you considered the practice of
11 carrying unloaded weapons and many rounds of ammunition
12 unsafe; is that accurate?

13 **A.** That was one of the reasons.

14 **Q.** Other than carrying the unloaded weapons and

11:11 15 many rounds of ammunition, is there anything else that
16 you're aware of that Mr. Zeleny has done during any of
17 his protests that would be unsafe?

18 MR. MASTER: Objection. Vague, ambiguous, and
19 overbroad.

11:12 20 You can answer.

21 THE WITNESS: Not that I'm aware of.

22 **Q.** (By Mr. Robinson) I want to make sure that the

23 only thing that Mr. Zeleny did that created a public

24 safety concern on your part was the carrying of unloaded

11:12 25 guns and many rounds of ammunition.

1 **A.** Are you speaking --

2 MR. MASTER: Is that a question?

3 **Q.** (By Mr. Robinson) I'm asking you to -- I'm

4 asking you to clarify that that's the only thing, in

11:12 5 your view, that he's done that's unsafe, as the person

6 most knowledgeable on behalf of the City of Menlo Park.

7 **A.** In -- when he was protesting?

8 **Q.** Correct.

9 **A.** When we speak of the broader public safety

11:12 10 realm, we are also speaking of the impact on passersby.

11 We receive numerous 9-1-1 calls and complaints about an

12 armed man standing at a corner of a street, which

13 obviously impacts public safety, it impacts our

14 resources, et cetera, and could, in fact, cause a safety

11:13 15 concern based on a driver driving by and seeing an armed

16 man.

17 **Q.** That's something related to Mr. Zeleny carrying

18 the unloaded weapons; right?

19 **A.** Yes.

11:13 20 **Q.** So other than Mr. Zeleny carrying unloaded

21 weapons and ammunition, is there anything else that he's

22 done that the City of Menlo Park considers unsafe?

23 MR. MASTER: I'll just object as to relevance,

24 "safety"; but vague and ambiguous.

11:13 25 You can answer.

1 THE WITNESS: No.

2 Q. (By Mr. Robinson) I didn't hear your answer.

3 A. No.

4 MR. MASTER: We've been going for a little over
11:13 5 an hour. Why don't we take a five-minute break.

6 MR. ROBINSON: Sure.

7 THE VIDEOGRAPHER: We are now going off the
8 record. The time is 11:13 a.m.

9 (Recess taken from 11:13 a.m. to 11:24 a.m.)

10 THE VIDEOGRAPHER: We are now going back on the
11 record. The time is 11:24 a.m.

12 Q. (By Mr. Robinson) I want to take up what we
13 were just talking about before, which is the public
14 safety concern related to Mr. Zeleny having unloaded
11:24 15 firearms and ammunition with him.

16 You mentioned another factor in your decision
17 to refer Mr. Zeleny's permit application to the city
18 manager and city attorney being the open carry nature of
19 the protest.

11:25 20 You recall saying that?

21 A. Yes.

22 Q. Does that also relate to Mr. Zeleny openly
23 carrying firearms as well as ammunition? The same
24 issue; right?

11:25 25 A. Well, no. There's a different issue. There's

1 the public safety issue, and then there's the legal
2 issue.

3 Q. Okay.

4 So we've covered the public safety issue;
11:25 5 you've testified about -- what is the legal issue that
6 you're talking about?

7 A. It's against the law to openly carry weapons in
8 the state of California.

9 Q. And that's the case unless the person carrying
11:25 10 the weapons has the appropriate type of permit; true?

11 It's illegal to openly carry firearms except
12 that if you have a special events permit or a film
13 production permit, then it's legal; correct?

14 A. Well, there's many exceptions to the Penal Code
11:26 15 section.

16 Q. And those are two of them; right? An
17 authorized film production event?

18 A. Authorized film production; correct.

19 Q. And a special event -- and entertainment.

11:26 20 A. And an authorized entertainment event.

21 Q. Right. So if Mr. Zeleny had the special event
22 permit or the film permit from the City of Menlo Park,
23 it would no longer be illegal for him to carry his
24 firearm.

11:26 25 MR. MASTER: I subject it calls for a legal

1 conclusion, speculation.

2 But you can answer.

3 THE WITNESS: That's correct, but there are
4 controls that could be made by the City depending on any
11:26 5 permit that's issued.

6 Q. (By Mr. Robinson) What are those controls?

7 A. It depends on the permit.

8 Q. In what way does it depend on the permit?

9 A. It goes back to what we spoke of earlier;

11:27 10 depends on what they're asking, what they're
11 contemplating doing, and we have the right to deal with
12 time, place, and manner and public safety issues. It
13 could be that we'll only let you do this during certain
14 times of the day. You have to have police presence to
11:27 15 block off the street. There's -- it depends on what is
16 being contemplated.

17 Q. Those restrictions that you mentioned, are
18 there any criteria that you use to decide whether to
19 impose those types of restrictions? Things like police
11:27 20 presence or only certain times of day or -- what you're
21 referring to as time, place, and manner, are there
22 criteria that you use to decide whether to impose time,
23 place, and manner restrictions?

24 A. It would depend on what is being contemplated.

11:27 25 Q. Are there objective criteria?

1 MR. MASTER: Objection. Vague and ambiguous
2 and overbroad.

3 Q. (By Mr. Robinson) You can answer.

4 A. There are criteria that are in the application
11:27 5 process, and then there are municipal code sections,
6 county ordinances, state laws, federal laws.

7 Q. What municipal ordinances bear on the time,
8 place, and manner restrictions relating to special
9 events of the type that Mr. Zeleny applied for?

11:28 10 MR. MASTER: Wow. Objection. Vague,
11 ambiguous, and overbroad. Calls for a legal conclusion.
12 Lacks foundation.

13 Q. (By Mr. Robinson) Are you aware of any city
14 ordinances that apply to Mr. Zeleny's proposed special
11:28 15 event?

16 MR. MASTER: Same objection.

17 You can answer.

18 THE WITNESS: There is a city ordinance that
19 was produced during discovery that deals with the open
11:28 20 carry of weapons.

21 Q. (By Mr. Robinson) Aside from the open carry of
22 weapons, are there any other city ordinances that you're
23 aware of that apply to Mr. Zeleny's permit application
24 for a special event permit?

11:28 25 A. It would depend on whether or not the special

1 event allowed noise. There are ordinances regarding
2 noise. There are ordinances regarding, you know,
3 blocking sidewalks, et cetera.

4 Q. Were any of those ordinances produced, to your
11:29 5 knowledge?

6 A. Not that I'm aware of.

7 Q. Are you aware of any other -- you're familiar
8 with Mr. Zeleny's permit application; right?

9 A. Yes.

11:29 10 Q. You were one of the people involved in
11 processing that application.

12 MR. MASTER: Talking about the special event
13 now?

14 MR. ROBINSON: Correct.

11:29 15 THE WITNESS: I was -- yes, I was involved in
16 examining the application.

17 Q. (By Mr. Robinson) And so you're aware of the
18 nature of the protest or the event that Mr. Zeleny was
19 contemplating in his application?

11:29 20 A. Yes.

21 Q. What municipal ordinances would apply, other
22 than the one relating to open carry of firearms?

23 MR. MASTER: Same objection. Lacks foundation,
24 calls for speculation. You can answer.

11:29 25 THE WITNESS: The ones I spoke about. We

1 actually did discuss, you know, the noise level from the
2 proposed generator that was going to be placed, and also
3 the fact that the -- you know, the sidewalk would have
4 to still be passable. So those type of issues were
11:30 5 discussed and/or contemplated.

6 Q. (By Mr. Robinson) Was Mr. Zeleny's
7 contemplated event somehow in violation of the noise
8 ordinance?

9 A. Well, we wouldn't know. It would depend on
11:30 10 what kind of generator he brought.

11 Q. At some point, Mr. Zeleny told you the kind of
12 generator that he was going to bring; right?

13 A. Correct.

14 Q. Was it in violation of the noise ordinance?

11:30 15 A. I don't know.

16 Q. Was potential violation of the noise ordinance
17 one of the reasons that Mr. Zeleny's permit was --
18 permit application was denied?

19 A. Not that I'm aware of, no.

11:30 20 Q. The other issue you mentioned was obstructing
21 the sidewalk; correct?

22 A. Correct.

23 Q. Based on your familiarity with Mr. Zeleny's
24 application, you understood that he was planning to
11:31 25 conduct his special event in the median strip; correct?

1 **A.** Correct.

2 **Q.** Not on the sidewalk?

3 **A.** Correct.

11:31 4 **Q.** How would conducting an event on the median
5 strip obstruct the sidewalk?

6 **A.** The -- and that's -- these are the questions
7 that were asked: Were there other vehicles that would
8 be parked there? Would there be a crowd of people?
9 Those type of questions were asked.

11:31 10 **Q.** Was Mr. Zeleny's permit application denied, in
11 any part, because of obstruction of the sidewalk?

12 **A.** No.

13 **Q.** Aside from the noise ordinance and ordinances
14 related to obstruction of the sidewalk, are you aware of
11:31 15 any other municipal ordinances that were implicated by
16 Mr. Zeleny's proposed special event?

17 **A.** Not city municipal codes.

18 **Q.** Were you aware of any county ordinances, rules,
19 or regulations of any kind that were implicated by
11:32 20 Mr. Zeleny's protest -- his special event that he
21 proposed to put on?

22 **A.** Not county ordinances.

23 **Q.** At the City level, are you aware of any
24 policies, procedures, rules, anything other than
11:32 25 ordinances, that were implicated by Mr. Zeleny's

1 proposed special event?

2 MR. MASTER: Can you read that back. I'm

3 sorry.

4 (Record read.)

11:32 5 THE WITNESS: The special events policy and
6 procedure.

7 Q. (By Mr. Robinson) Other than the special
8 events policy and procedure, are you aware of any other
9 municipal policies, procedures, rules, guidelines,
11:33 10 regulations, or any other municipal authority that was
11 implicated by Mr. Zeleny's protest -- his special event?

12 A. No.

13 Q. The special event policy is the policy listed
14 on the City's website and in the frequently asked
11:33 15 questions and on the application; right?

16 A. Correct.

17 Q. Is there any other written indication of the
18 City's special event policy, other than what's on the
19 website and the permit application?

11:33 20 A. Not that I'm aware of.

21 Q. So the entirety of the policy is the website,
22 the FAQ, the permit application itself, and this flow
23 chart?

24 A. Well, the website is just the medium in which
11:33 25 you access it. They're documents, but yes.

1 **Q.** Okay.

2 So the website is not the policy; it just has
3 the policy posted to it?

4 **A.** Correct.

11:34 5 **Q.** So the policy's comprised of this flow chart,
6 right, **Exhibit 30**? The permit application itself;
7 correct?

8 **A.** Correct.

9 **Q.** And the frequently asked questions; correct?

11:34 10 **A.** Correct.

11 **Q.** Other than those three documents: The flow
12 chart, the permit application, and the frequently asked
13 questions, are there any other documents that reflect
14 the City's special event policy that you're aware of?

11:34 15 **A.** The website itself does have some -- some
16 information on it that basically is educating people on
17 how to go about getting a special event permit, but
18 that's it.

19 **Q.** Okay.

11:34 20 So let's include that. So those four things:
21 Website, flow chart, FAQ posting, and the permit
22 application itself, those four things are the entirety
23 of the City's special event policy; correct?

24 **A.** And procedures, yes.

11:35 25 **Q.** Are the procedures contained in those four

1 documents, or are they a separate item?

2 **A.** They're contained in those documents.

3 **Q.** I just want to make sure that there's not some
4 written document out there, other than those four

11:35 5 things, but I think we're on the same page that those
6 four documents are the entirety of the City's special
7 event policy; true?

8 **A.** Well, not necessarily. As I stated earlier
9 today, I'm not sure whether other departments have

11:35 10 something -- some checklist that they have themselves
11 that is written down.

12 **Q.** Did you see any documents of that nature in the
13 production that the City made to us?

14 **A.** I did not.

11:35 15 **Q.** You understand that you are designated as the
16 person most knowledgeable on Topic 15 in **Exhibit 29**,
17 which is "rules, regulations, guidelines, guidance,
18 policies, or procedures applicable to plaintiff's permit
19 applications with protests."

11:36 20 **A.** Yes.

21 **Q.** You understood that you were designated in that
22 capacity; right?

23 **A.** Yes.

24 **Q.** So in your capacity as the person most
11:36 25 knowledgeable on behalf of the City of Menlo Park, are

1 there any other written documents reflecting the City's
2 policy relating to special event permits other than the
3 four documents you just mentioned to me?

4 MR. MASTER: Objection. Asked and answered.

11:36 5 Argumentative.

6 You can answer.

7 THE WITNESS: As I stated I'm not sure if some
8 other department may have, again, a checklist that I'm
9 not aware of; whether it's, you know, work product that

11:36 10 they use. I don't know.

11 **Q.** (By Mr. Robinson) If there is a person with
12 knowledge of that issue in the City of Menlo Park, who
13 would it be?

14 **A.** I would assume it would be the person who is
11:37 15 handling the special event application review for each
16 department.

17 **Q.** Are any of these potential checklists
18 maintained by the departments published in any way to
19 the public?

11:37 20 MR. MASTER: Objection. Calls for speculation.
21 Lacks foundation.

22 THE WITNESS: I don't know.

23 **Q.** (By Mr. Robinson) Is there someone at the City
24 of Menlo Park who would know?

11:37 25 MR. MASTER: Same objection.

1 You can answer.

2 THE WITNESS: Again, I assume it would be the
3 person who was actually reviewing this.

4 **Q.** (By Mr. Robinson) Reviewing it, meaning
11:37 5 reviewing the permit application?

6 **A.** Correct.

7 **Q.** Going back to Exhibit 30, we talked about,
8 before, the legal issues related to open carry, the
9 safety issues related to Mr. Zeleny's open carry of
11:38 10 firearms, and then the indefinite nature of the protest.
11 Were there any other factors that caused you to refer
12 Mr. Zeleny's permit application to the city manager and
13 city attorney?

14 **A.** Yes.

11:38 15 **Q.** What were the other factors?

16 **A.** The fact that he was also contemplating and/or
17 requesting to use a center median, which is prohibited
18 by the California Vehicle Code; the fact that in order
19 to get to that center median, anybody who wanted to
11:38 20 attend this event would have to do something that is
21 prohibited in jaywalking to that center median.

22 MR. MASTER: You're talking fast.

23 THE WITNESS: Yeah. Sorry.

24 **Q.** (By Mr. Robinson) Okay.

11:39 25 So we have the safety and legal issues related

1 to open carry, we have the indefinite nature, and we
2 have the use of the median strip. Any other factors
3 that caused you to refer Mr. Zeleny's permit application
4 to the city attorney and city manager?

11:39 5 **A.** Also, the fact that what was contemplated was a
6 device that would be displaying some kind of lighted
7 animation or something that may, in fact, again, also be
8 in violation of the Vehicle Code.

9 **Q.** Anything else?

11:39 10 **A.** No.

11 **Q.** Any other reasons?

12 **A.** For referring it?

13 **Q.** For referring it.

14 **A.** No.

11:39 15 **Q.** Going through the **Exhibit 30**, I understand that
16 this exhibit reflects the ordinary process of handling a
17 permit application; correct?

18 **A.** Yes.

19 **Q.** In the ordinary process, the permit application
11:39 20 would not be referred to you; correct?

21 **A.** Referred to me or would I be advised of it?

22 **Q.** You wouldn't be the person considering the
23 permit application on behalf of the police department in
24 ordinary circumstances.

11:40 25 **MR. MASTER:** Objection. Misstates his

1 testimony.

2 Q. (By Mr. Robinson) You can go ahead and answer.

3 A. It would depend on the process -- on the
4 application.

11:40 5 Q. I think you said out of the hundred or so
6 applications since 2012, 2013, you reviewed half a dozen
7 to a dozen yourself? Or you handled between half a
8 dozen and a dozen of them; correct?

9 MR. MASTER: Which one is it? It's compound.

11:40 10 You can answer.

11 Q. (By Mr. Robinson) How many of the permit
12 applications processed by the City since 2012, 2013 --
13 of those applications, how many of them were you the
14 person responsible for addressing the application on
11:41 15 behalf of the police department?

16 A. Perhaps half a dozen.

17 Q. Of those half a dozen -- sorry. Okay. So we
18 have half a dozen. The other 96 -- 94 or so
19 applications, you weren't the person who processed on
11:41 20 behalf of the police department; is that accurate?

21 Somebody else did.

22 A. Processed or was advised of?

23 Q. Processed.

24 A. Processed. No.

11:41 25 Q. Someone else handled the other 94 or so;

1 correct?

2 MR. MASTER: Vague and ambiguous.

3 You can answer.

4 THE WITNESS: For those that came to the police

11:41 5 department, yes.

6 Q. (By Mr. Robinson) So you were the person to

7 process, on behalf of the police department,

8 approximately 6 percent of the applications, based on

9 your estimate; correct?

11:41 10 MR. MASTER: Objection. It's vague and

11 ambiguous. Overbroad. It's vague.

12 Yeah. Go ahead, if you can answer.

13 THE WITNESS: You mean six out of a hundred?

14 Is that what you're trying to say?

11:42 15 Q. (By Mr. Robinson) That's what I'm trying to

16 say.

17 A. That's an estimation on the total amount, yes.

18 Q. So it was relatively unusual, in the course of

19 permit applications, for you to be the person who

11:42 20 processed the application on behalf of the police

21 department; correct?

22 MR. MASTER: Vague and ambiguous.

23 Argumentative.

24 You can answer.

11:42 25 THE WITNESS: Yes.

1 **Q.** (By Mr. Robinson) And out of those six
2 applications that you processed, you referred two of
3 them to the city manager and city attorney; correct?

11:42 4 **A.** Two that I recall, yes; the two that I've
5 already talked about.

6 **Q.** So of the applications that you processed on
7 behalf of the police department, it was also relatively
8 unusual for you to refer it to the city manager and city
9 attorney; correct?

11:42 10 **A.** Unusual in that I've only -- only two out of
11 the six? Yes.

12 **Q.** In the ordinary process of handling a permit
13 application in the City of Menlo Park, you are generally
14 not the person who handles it on behalf of the police
11:43 15 department; and, generally, it's not referred to the
16 city manager and city attorney; is that fair?

17 **A.** Unless it's extraordinary; correct.

18 **Q.** And Mr. Zeleny's permit application was
19 extraordinary for the four reasons you've mentioned to
11:43 20 me previously; correct?

21 **A.** Correct.

22 **Q.** One of the reasons that you mentioned was the
23 open carrying of firearms; true?

24 **A.** Yes.

11:43 25 **Q.** And you were aware, when you were processing

1 Mr. Zeleny's permit application, that his open carrying
2 of firearms would be complying with California law if he
3 had the permit he was requesting; true?

4 A. At what time, are you saying?

11:43 5 Q. In 2015. If Mr. Zeleny had the permit that he
6 was asking for, the special events permit, he would fall
7 within the exception to the Penal Code that prohibits
8 carrying of unloaded firearms; right?

9 MR. MASTER: Objection. Calls for legal
11:44 10 conclusion. Lacks foundation. Speculation.

11 You can answer.

12 THE WITNESS: That's why I sent it to the city
13 attorney to determine whether or not the interpretation
14 of the exception would be that if a person had a special
11:44 15 event permit or -- an entertainment permit or an
16 entertainment event, that the exception would apply.

17 Q. (By Mr. Robinson) Did you ever reach a view,
18 in your own mind, both individual -- well, let's do it
19 this way: As the person most knowledgeable on behalf of
11:44 20 the City of Menlo Park, do you have an opinion on
21 whether Mr. Zeleny would be compliant with California
22 law in carrying firearms if he got the special events
23 permit?

24 A. If he was -- if he had received a special event
11:44 25 permit for an entertainment event in the city of Menlo

1 Park, then the exception would apply.

2 Q. And if the exception would apply, Mr. Zeleny
3 would be allowed to openly carry unloaded firearms;
4 correct?

11:45 5 A. Yes, but there could be -- depending on what
6 the controls were that would be put on by different city
7 departments, including the police department.

8 Q. What types of controls was the city police
9 department allowed to put on Mr. Zeleny's carrying of
11:45 10 firearms?

11 A. The ones I've already mentioned. It could be
12 blocking off of streets, confirming that the firearms
13 are, in fact, unloaded and safe; you know, whether or
14 not police presence needed to be made. So all these
11:45 15 different factors would come into play at that time.

16 Q. Are those -- so it's your understanding that
17 the City of Menlo Park Police Department would have the
18 right to impose these requirements or restrictions on
19 Mr. Zeleny's carrying of firearms?

11:46 20 A. Time, manner, place, yes.

21 Q. And that's in connection with his special
22 events permit; right?

23 A. If he were to -- if he were to get a -- if a
24 special events permit were to be approved, any of the
11:46 25 departments involved could, in fact, put controls on

1 what criteria needed to be met in order for the -- for
2 the event to go on.

3 Q. How does the City of Menlo Park come up with
4 those criteria?

11:46 5 MR. MASTER: Objection. Asked and answered.

6 THE WITNESS: Again, it would depend on the
7 actual event; and going back to traffic impact, public
8 safety, crowd control, the -- everything else that I've
9 already talked about.

11:47 10 Q. (By Mr. Robinson) Are the criteria decided on
11 a permit-by-permit basis?

12 MR. MASTER: Objection. Asked and answered.

13 THE WITNESS: Yes.

14 MR. MASTER: At some point, I'm going to stop
11:47 15 this. He's answered that at least three or four times.

16 Q. (By Mr. Robinson) Looking at Exhibit 30 again,
17 Step D under the flow chart, it looks like if more
18 information is needed from the applicant, Matt Milde is
19 supposed to set up a meeting with the applicant; is that
11:47 20 accurate?

21 A. According to the document, yes.

22 Q. This is one of the City's published policies on
23 handling special events permits; right?

24 A. Yes.

11:47 25 Q. All right.

1 And it describes how the process is supposed to
2 work, right, in ordinary circumstances?

3 A. Yes.

4 Q. So if, after review by the City staff, it's
11:48 5 decided that more information is needed, then Matt Milde
6 or his successor sets up a meeting with the applicant;
7 correct?

8 A. Yes.

9 Q. Did the City ever set up a meeting with
11:48 10 Mr. Zeleny?

11 A. I'm not sure if a meeting was requested or the
12 more information requested was via e-mail.

13 Q. Who generally decides whether to request a
14 meeting? Is it the City or the applicant?

11:48 15 A. It would be the -- it could be either.

16 Q. In the general process, who, typically,
17 requests a meeting with the applicant?

18 MR. MASTER: Objection. Asked and answered.
19 It's vague and ambiguous.

11:48 20 Go ahead.

21 THE WITNESS: It would be the person who is
22 representing Community Services.

23 Q. (By Mr. Robinson) So it would typically be
24 Mr. Milde or his successor?

11:48 25 A. Yes.

1 **Q.** Do you know whether Mr. Milde or anyone else in
2 his role ever requested a meeting with Mr. Zeleny in
3 connection with the permit?

4 **A.** I don't recall if he requested a meeting or
11:49 5 stated they could meet or whether the e-mail that was
6 sent was the one requesting more information.

7 **Q.** Was there any reason, that you're aware of, to
8 request more information from Mr. Zeleny via e-mail as
9 opposed to setting up a meeting?

11:49 10 Was there any reason not to set up a meeting
11 with Mr. Zeleny that you're aware of?

12 **A.** Well, yes. My understanding is Mr. Milde said
13 that because he lived in Los Angeles, that it probably
14 would not be feasible to have an in-person meeting, and
11:49 15 it would be easier for Mr. Zeleny to do it via e-mail.

16 **Q.** Do you know whether anyone ever asked
17 Mr. Zeleny whether he'd like to attend a meeting?

18 **A.** At that time?

19 **Q.** Correct.

11:49 20 **A.** I don't know.

21 **Q.** Is there someone within the City who would
22 know?

23 **A.** Perhaps Mr. Milde, but he's no longer with the
24 City.

11:50 25 **Q.** Was -- in your experience, dealing with permit

1 applications -- strike that.

2 As the person most knowledgeable for the City
3 of Menlo Park about permit applications, is it typical
4 for the City to elect to correspond with the applicant
11:50 5 via e-mail as opposed to setting up a meeting.

6 MR. MASTER: Objection. Vague and ambiguous.
7 You can answer.

8 THE WITNESS: I think, in some cases, yes,
9 depending on where the applicant lives. And I know of
11:50 10 several where it was not done in person. But if the
11 person is local and it is convenient for them to meet in
12 person, then the meeting could be in person.

13 Q. (By Mr. Robinson) Okay.

14 To the best of your knowledge, the reason for
11:51 15 communicating with Mr. Zeleny via e-mail, rather than
16 setting up an in-person meeting was for Mr. Zeleny's
17 convenience?

18 A. Yes.

19 Q. Was Mr. Zeleny ever given a conditional
11:51 20 approval or conditional denial of his permit
21 application?

22 MR. MASTER: Objection. Compound. Vague and
23 ambiguous.

24 Q. (By Mr. Robinson) Was he ever given a
11:51 25 conditional approval of his permit application?

1 **A.** No.

2 **Q.** Was he ever given a conditional denial of his
3 permit application?

4 **A.** Yes.

11:51 5 **Q.** What were the conditions?

6 **A.** The denial -- the conditions that were on the
7 e-mail that were -- regarding his denial was the fact
8 that he could not have it on the median; that there
9 would be some controls over the display on how bright it
11:51 10 would be; that the -- anyway, going back to the -- a new
11 location.

12 Originally, the location contemplated was
13 somewhat vague and had to be -- it had to be more
14 accurately described, and the fact that he was
11:52 15 contemplating openly carrying weapons.

16 **Q.** The fact that he was contemplating openly
17 carrying weapons was one of the grounds for the
18 conditional denial; true?

19 **A.** Yes.

11:52 20 **Q.** Were you aware at the time of the city's
21 conditional denial that if Mr. Zeleny obtained the
22 permit he was asking for, he would have been legally
23 permitted to carry unloaded firearms?

24 MR. MASTER: Objection. Asked and answered.

11:52 25 **Q.** (By Mr. Robinson) You can answer.

1 **A.** That could have been an exception to the Penal
2 Code, yes.

3 **Q.** So you were aware that you were denying
4 Mr. Zeleny the permit he needed in order to allow him to
11:53 5 legally carry his firearms during his event; correct?

6 MR. MASTER: Objection. Argumentative. Asked
7 and answered.

8 **Q.** (By Mr. Robinson) You can answer.

9 **A.** I'm sorry?

11:53 10 **Q.** You understood in -- the City understood in
11 denying Mr. Zeleny's permit on the grounds that his
12 event contemplated carrying firearms, that it was
13 denying him the permit he needed in order to legally
14 carry the firearms; right?

11:53 15 **A.** That was one of the factors.

16 **Q.** But --

17 **A.** It wasn't the only factor that was used to
18 deny --

19 **Q.** I didn't ask -- sorry to interrupt you.

11:53 20 I didn't ask if it was one of the factors. It
21 was a yes-or-no question.

22 The question was: Was the City of Menlo Park
23 aware, at the time it conditionally denied Mr. Zeleny's
24 permit that the permit would have allowed him to legally
11:53 25 carry unloaded firearms during this event?

1 MR. MASTER: Okay.

2 Now you're being argumentative. That's not the
3 question you just asked him. It's a different question.

4 So I'd appreciate it if you're professional
11:54 5 towards the chief. He answered your question. If you
6 want to go back to the question you asked previously,
7 the reporter can read that back or ask it differently.

8 MR. ROBINSON: And, again, I have asked you to
9 keep the speaking objections to a minimum. I'm trying
11:54 10 to make it through the deposition as quickly as I can,
11 but the speaking objections and talk on the record is
12 not helpful too.

13 Q. (By Mr. Robinson) So why don't we do this: At
14 the time the City conditionally denied Mr. Zeleny's
11:54 15 permit, was the City aware that the permit, had it been
16 granted, would have allowed Mr. Zeleny to openly carry
17 unloaded firearms?

18 MR. MASTER: Objection. Asked and answered.
19 He just answered that question.

11:54 20 Go ahead. One more time.

21 THE WITNESS: And the answer is: That could
22 have been one of the exceptions, yes.

23 Q. (By Mr. Robinson) It could have been one of
24 the exceptions to what?

11:55 25 A. To the prohibition to open carry of weapons.

1 **Q.** Did you have a position at the time -- did the
2 City have a position at the time it conditionally denied
3 Mr. Zeleny's permit about whether granting the permit
4 would have allowed him to legally carry unloaded
11:55 5 firearms during his event?

6 MR. MASTER: Objection. Vague and ambiguous.
7 Confusing. Unintelligible.

8 **Q.** (By Mr. Robinson) You can answer.

9 **A.** You need to be a little bit more clear about
11:55 10 the -- what you're asking. Sorry.

11 MR. ROBINSON: Can we read back the last
12 question, please.

13 (Record read.)

14 MR. MASTER: Also say it's asked and answered.
11:56 15 But go ahead.

16 THE WITNESS: Again, the City's position was
17 that a special entertainment event could have, perhaps,
18 allowed him, under one of the exceptions, but there was
19 no legal firm decision on that, if that's what you're
11:56 20 asking.

21 **Q.** (By Mr. Robinson) There was no firm legal
22 decision by the City at the time it conditionally denied
23 the permit?

24 **A.** On the question of whether or not the exception
11:56 25 would apply.

1 **Q.** So the City didn't have a firm view in -- when
2 it denied the permit about whether granting the permit
3 would cause the exception to apply?

4 MR. MASTER: Objection. Asked and answered.

11:56 5 THE WITNESS: The -- the City's view was that
6 the -- if Mr. Zeleny had gotten a valid permit for an
7 entertainment event, the exception could apply, but
8 there still needed to be review of that.

9 **Q.** (By Mr. Robinson) Review of what?

11:57 10 **A.** Review of the exception.

11 **Q.** You understood -- the City understood, in
12 processing Mr. Zeleny's permit application, that one of
13 the reasons he was requesting a permit was that so he
14 could fall within the exception; right?

11:57 15 MR. MASTER: Objection. Asked and answered
16 three or four times in the past ten minutes, Counselor.
17 I don't want to have to instruct him not to answer, but
18 let you do it one more time, and then we're going to
19 stop that and move on to a different topic.

11:57 20 He's answered it repeatedly.

21 Go ahead.

22 MR. ROBINSON: Hold on. Before you answer.

23 You've been giving numerous speaking objections
24 and speeches on the record. I'm trying to make it
11:57 25 through the deposition. I've asked you repeatedly to

1 stop doing it. If it continues, I will stop the
2 deposition myself, and we'll go in for an order
3 compelling a further deposition without improper
4 instructions.

11:58 5 MR. MASTER: Counselor, I'm happy to do what I
6 need to do, but at the end of the day, you're not
7 entitled to badger the witness with the same question
8 over and over and over again.

9 Go ahead. I'll let you answer that question
11:58 10 one last time.

11 MR. ROBINSON: Let's just read back the last
12 question, please.

13 (Record read.)

14 MR. MASTER: Also calls for speculation. Lacks
11:58 15 foundation.

16 Go ahead.

17 THE WITNESS: I don't know what was in his
18 mind.

19 MR. ROBINSON: Why don't we mark this Exhibit
11:58 20 31, please.

21 (Exhibit 31 was marked for identification.)

22 Q. (By Mr. Robinson) Just for the record, Exhibit
23 31 is multiple pages. The Bates numbers are MP1381
24 through 1385; correct? The numbers in the bottom
12:00 25 right-hand corner.

1 **A.** You're asking me?

2 **Q.** Yes.

3 **A.** Yes.

4 **Q.** Do you recognize **Exhibit 31**?

12:00 5 **A.** I recognize it as an e-mail.

6 **Q.** Was it an e-mail that was sent to you?

7 MR. MASTER: Which e-mail are you referring to,
8 just so we're clear?

9 **Q.** (By Mr. Robinson) Mr. Bertini, you use e-mail
12:00 10 in the course of your work; true?

11 **A.** Yes.

12 **Q.** You have received e-mails, from time to time,
13 that contain an e-mail followed by a series of other
14 e-mails behind it?

12:01 15 **A.** Also known as a thread.

16 **Q.** Fair enough.

17 You receive e-mail threads; right?

18 **A.** Correct.

19 **Q.** You're familiar with what they look like?

12:01 20 **A.** I am.

21 **Q.** Generally, in an e-mail thread, the first
22 e-mail at the top of the tread contains all the prior
23 e-mails; is that your experience?

24 **A.** Correct.

12:01 25 **Q.** Does this appear to be an e-mail thread that

1 you received from Nicholas Flegel?

2 A. It wasn't directed to me, but I was copied on
3 it, yes.

4 Q. Okay.

12:01 5 When you received it, did it contain all of the
6 prior e-mails, as e-mail threads tend to do?

7 A. Yes.

8 Q. Who is Mr. Flegel?

9 A. He is one of the city attorneys.

12:01 10 Q. And I'm just going to ask you, at this point,
11 about a sentence in the first paragraph of Mr. Flegel's
12 e-mail. It states, "Without a special event permit or
13 film permit, it is inappropriate and illegal for you to
14 possess guns as part of your entertainment event/film
12:02 15 production."

16 Do you see that?

17 A. Yes.

18 Q. Does that represent the -- strike that.

19 Does that accurately reflect the City of Menlo

12:02 20 Park's position on Mr. Zeleny's carrying of unloaded
21 weapons during his event?

22 A. Yes.

23 Q. He couldn't do it without one of those two
24 permits.

12:02 25 A. The -- yes. The exception would not apply

1 without one of the permits.

2 Q. Was that the City's position at the time it
3 conditionally denied Mr. Zeleny's permit originally in
4 2015?

12:02 5 MR. MASTER: Objection. Asked and answered.

6 THE WITNESS: Yes. The City -- I'm sorry. I
7 hate to ask you to repeat it, but --

8 Q. (By Mr. Robinson) Was that -- the position
9 reflected in Mr. Flegel's e-mail, was that the position
12:02 10 of the City at the time it conditionally denied
11 Mr. Zeleny's permit in 2015?

12 A. Only as it pertained to the firearms, yes.

13 Q. It's a fair clarification. So I want to make
14 sure we get a clear question and answer.

12:03 15 As it pertained to firearms, the City's
16 position reflected in Mr. Flegel's e-mail of December 7,
17 2017, was also the City's position at the time it
18 conditionally denied Mr. Zeleny a special events permit;
19 correct?

12:03 20 A. Yes.

21 Q. One of the reasons that the City denied
22 Mr. Zeleny a special events permit was to prevent him
23 from falling within the exception to the ban on openly
24 carrying unloaded firearms; correct?

12:03 25 MR. MASTER: Objection. Asked and answered.

1 Argumentative.

2 THE WITNESS: And the answer would be no.

3 There was many -- there were several reasons why the
4 special events permit was denied; not just the weapons.

12:03 5 Q. (By Mr. Robinson) That was among the reasons;
6 right?

7 A. One of them.

8 Q. Why don't we take a look at what I'll hand
9 you -- ask our reporter to hand you as Exhibit 32.

12:04 10 (Exhibit 32 was marked for identification.)

11 THE WITNESS: I've examined Exhibit 32.

12 Q. (By Mr. Robinson) For the record, it's a
13 one-page document Bates marked MP1437; correct?

14 A. Yes.

12:04 15 Q. The top e-mail -- first of all, the top e-mail
16 is an e-mail from Derek --

17 A. Schweigart.

18 Q. Schweigart?

19 A. S-c-h-w-e-i-g-a-r-t.

12:05 20 Q. Thank you.

21 Who is Derek Schweigart?

22 A. At the -- oh. Now, this is 2019; he is the
23 Community Services director.

24 Q. And I'll just -- is this one of the documents
12:05 25 that you reviewed in preparing for your deposition?

1 **A.** Yes.

2 **Q.** It relates to a public records request;
3 correct?

4 **A.** Yes.

12:05 5 **Q.** And Mr. Schweigart asks, in his top e-mail,
6 "I'm wondering if this is the one that PD handled."

7 Do you see that?

8 **A.** Yes.

9 **Q.** Was Mr. Zeleny's permit application handled by
12:05 10 the police department?

11 **A.** We were one of the departments.

12 **Q.** Are you familiar with any other permit
13 application that could be characterized as one that the
14 police department handles?

12:06 15 **A.** We would be --

16 MR. MASTER: Hold on. Objection. Lacks
17 foundation. Calls for speculation.

18 You can answer.

19 THE WITNESS: We would be involved in almost
12:06 20 every permitting. The -- there are types of events that
21 are very heavily handled by the police department by
22 their very nature.

23 **Q.** (By Mr. Robinson) As the person most qualified
24 on behalf of the City of Menlo Park, is Mr. Zeleny's
12:06 25 permit application the permit application that

1 Mr. Schweigart is referring to as the one that PD
2 handled?

3 MR. MASTER: Objection. Lacks foundation.
4 Calls for speculation.

12:06 5 You can answer.

6 THE WITNESS: At the time of the application,
7 Mr. Schweigart was not the director, so I'm not sure
8 what his level of knowledge was about how this entire
9 process happened.

12:07 10 Q. (By Mr. Robinson) All I'm asking you is as the
11 person who's been designated as most qualified for the
12 City of Menlo Park to testify about the documents that
13 were produced, is the reference in the document to the
14 permit that PD handled a reference to Mr. Zeleny's
12:07 15 permit application?

16 MR. MASTER: Calls for speculation. Lacks
17 foundation.

18 Why don't you lay some foundation for him.
19 If you can answer.

12:07 20 THE WITNESS: Again, I'm not -- Mr.
21 Schweigart -- I'm not sure what his level of awareness
22 was of the entire process. I assume this is the -- I
23 can assume --

24 MR. MASTER: Don't assume. If you know, he's
12:07 25 entitled to it, but don't guess as to what he's saying.

1 If you know, he's entitled to an answer.

2 THE WITNESS: No. I don't know.

3 Q. (By Mr. Robinson) Is there someone else at the
4 City of Menlo Park who would be better able to answer
12:07 5 that question?

6 A. I assume Mr. Schweigart, since he wrote -- he
7 authored the e-mail.

8 MR. ROBINSON: Counsel, are you prepared to
9 designate Mr. Schweigart as a PMK?

12:07 10 MR. MASTER: For what purpose?

11 MR. ROBINSON: To testify about whether this is
12 the application that the police department handled.

13 MR. MASTER: No. He was not the PMK, no.

14 MR. ROBINSON: Okay.

12:08 15 MR. MASTER: You're asking -- if you want to
16 talk about it, I'm happy to talk about it. We can do it
17 here on the record or off the record.

18 MR. ROBINSON: Why don't we just -- why don't
19 we finish my line of questioning, and then we can talk
12:08 20 about it.

21 MR. MASTER: Absolutely.

22 Q. (By Mr. Robinson) Regardless of what
23 Mr. Schweigart knew or didn't know, is Mr. Zeleny's
24 permit application a permit application that the Police
12:08 25 Department of Menlo Park handled?

1 MR. MASTER: Objection. Asked and answered.

2 THE WITNESS: We were one of the departments
3 that dealt with it.

4 Q. (By Mr. Robinson) Do you have any
12:08 5 understanding of why Mr. Schweigart characterized some
6 application, whether it's Mr. Zeleny's or someone
7 else's, as the one that PD handled?

8 MR. MASTER: Objection. Lacks foundation.
9 Calls for speculation.

12:08 10 THE WITNESS: No.

11 Q. (By Mr. Robinson) Okay.

12 We have about ten minutes left on this tape, so
13 why don't we take a break here, and I'm happy to meet
14 and confer with you about this.

12:09 15 Do you want to have Mr. Bertini present, or do
16 you want to --

17 MR. MASTER: No. He can take a break.

18 MR. ROBINSON: Okay.

19 Let's take a break.

12:09 20 THE VIDEOGRAPHER: This now marks the end of
21 disk labeled No. 1 in the videotaped deposition of Chief
22 Dave Bertini. We're now going off the record. The time
23 is 12:08 p.m.

24 MR. ROBINSON: Could we actually stay on the
12:09 25 written record just for purposes of setting up lunch and

1 then doing a quick meet and confer with Counsel?

2 MR. MASTER: Are we doing that off the record
3 or on the record?

4 MR. ROBINSON: Let's do it on the record.

12:09 5 MR. MASTER: Okay.

6 MR. ROBINSON: I don't think we --

7 MR. MASTER: Go for it. I'm happy to.

8 MR. ROBINSON: Okay.

9 MR. MASTER: You can go outside.

12:09 10 MR. ROBINSON: So, first of all, do you want to
11 take till 1:00 for lunch? It's about ten after.

12 MR. MASTER: Yeah. That's fine.

13 MR. ROBINSON: Okay.

14 Michael, do you want to give us a minute?

12:09 15 MR. ZELENY: Yeah.

16 MR. ROBINSON: So Chief Bertini has testified

17 that he's not aware of, including among other things,

18 whether this is the application that the police

19 department handled. He's not aware of the policies of

12:10 20 other City departments. He's not aware of a number of

21 things that go directly to the topics that he's here on,

22 most importantly of which is the special event permit.

23 MR. MASTER: I would disagree with that

24 characterization.

12:10 25 MR. ROBINSON: You're welcome to do that, but

1 are we going to have witnesses that can, for example --

2 MR. MASTER: What do you want, specifically?

3 MR. ROBINSON: I want a witness who can tell me
4 what the criteria are for a special events permit.

12:10 5 MR. MASTER: He's already told you that.

6 MR. ROBINSON: I don't think so. He said there
7 are potentially criteria for other departments that he's
8 not aware of.

9 MR. MASTER: He's -- no. That's not what he
12:10 10 said, Counselor. He said the criteria -- your question
11 was: Did they have a written list of that criteria
12 somewhere? That was your question.

13 He answered: I don't know if they have a
14 written list.

12:10 15 We have looked. I will tell you on the record
16 that we don't have any written documents like that.

17 MR. ROBINSON: Okay.

18 MR. MASTER: So he is the person most
19 knowledgeable.

12:10 20 MR. ROBINSON: He's the person most
21 knowledgeable about unwritten policies of other
22 departments?

23 MR. MASTER: Yes. He just told you that.

24 MR. ROBINSON: Okay.

12:11 25 I disagree with that, but we can take it up --

1 we can explore his level of knowledge about these issues
2 and then take it up, but I think we've met and conferred
3 about his --

4 MR. MASTER: Hold on. We're not trying to hide
12:11 5 anything. Okay? The bottom line is Mr. Milde is no
6 longer with the City anymore.

7 You understand that; correct?

8 MR. ROBINSON: I do.

9 MR. MASTER: Okay.

12:11 10 The chief of police was the person involved
11 with this special event permit application with your
12 client. He's also been involved with numerous other
13 special event permits, given his history. We have
14 designated him, and he has been educated to the extent
12:11 15 possible that -- to testify on those issues.

16 The law isn't that we are required to give you
17 every single person who has knowledge about everything.
18 The law requires us to give you the person who is most
19 knowledgeable about those things. That doesn't mean he
12:11 20 has to have knowledge about everything.

21 And to the extent he doesn't have knowledge
22 about something, then you can take it as you see fit.

23 MR. ROBINSON: Okay.

24 MR. MASTER: If there's specific questions you
12:12 25 have on other departments, I'm happy to understand what

1 those are and determine how we can get you that
2 information that you need, but what I don't appreciate
3 on the record is you hounding my client over an e-mail
4 that he was not copied on, that he did not author, about
12:12 5 what someone meant by their e-mail. That's what I do
6 not appreciate, and if that continues, I'm going to stop
7 it.

8 MR. ROBINSON: Your client is designated as the
9 person most knowledgeable on behalf of the City. He's
12:12 10 been -- hold on. Let me finish what I'm -- I let you
11 finish. Now let me finish.

12 MR. MASTER: I'm not stopping you.

13 MR. ROBINSON: He's been designated as the
14 person most qualified, among other things, on the
12:12 15 documents produced in this case. He can't lack
16 foundation about what is meant by a document produced in
17 this case. If he needs to contact someone to ask what
18 it's about, he needs to do that, but he has to have a
19 foundation to testify about the topics that he's been
12:12 20 designated on.

21 MR. MASTER: I objected to that topic because
22 that topic, quite frankly, is overbroad and ridiculous.
23 He is not going to testify as to the nature of what
24 someone else wrote to two other people. We aren't going
12:13 25 to designate someone to do that. And this one, quite

1 frankly, has nothing to do with what you're talking
2 about in the case. He's already testified about his
3 involvement in the special event permit application.

4 Okay?

12:13 5 MR. ROBINSON: I'm sorry. This is an e-mail
6 about a FOIA request for documents related to Mr. Zeleny
7 that was served in the context of this lawsuit.

8 MR. MASTER: No.

9 MR. ROBINSON: You're telling me an e-mail
12:13 10 about a FOIA request served in connection with this
11 lawsuit is not relevant to the lawsuit?

12 MR. MASTER: Yeah. How?

13 MR. ROBINSON: Because we'd like to know if
14 Mr. Zeleny's application was transferred to the police
12:13 15 department for handling, which it apparently was. And I
16 don't understand why the person most qualified on behalf
17 of the City can't answer that question.

18 MR. MASTER: He did answer the question, and
19 we're done.

12:13 20 MR. ROBINSON: Okay.

21 MR. MASTER: Go off the record. We're done.

22 (Lunch recess taken from 12:13 p.m. to 1:07
23 p.m.)

24 THE VIDEOGRAPHER: This now marks the beginning
13:07 25 of disk labeled No. 2 in the videotaped deposition of

1 Chief Dave Bertini. We are now going back on the
2 record. The time is 1:07 p.m.

3 Q. (By Mr. Robinson) Okay.

4 We're back on the record. Chief Bertini, you
13:07 5 understand you're under the same oath you took this
6 morning; correct?

7 A. I do.

8 Q. In the ordinary permit process, who makes the
9 ultimate decision about whether to grant or deny a
13:07 10 permit?

11 THE VIDEOGRAPHER: I got some interference --
12 one second, Counsel.

13 Everybody's phone is turned off; right?

14 THE WITNESS: I have to leave mine on. I'm
13:08 15 sorry.

16 MR. MASTER: Airplane.

17 THE WITNESS: Okay.

18 THE VIDEOGRAPHER: I think we're clear for now.
19 So yeah. We just experienced some audio interference,
13:08 20 but the record is still going. So if it happens again,
21 I'll let you know.

22 MR. ROBINSON: Okay.

23 Could we just read back the last question.

24 (Record read.)

13:08 25 MR. MASTER: Objection. Vague and ambiguous as

1 to which permit.

2 But go ahead.

3 Q. (By Mr. Robinson) Let me clarify. In the
4 ordinary special event permit process as it was in
13:08 5 effect in 2015, who made the ultimate decision about
6 whether to grant or deny a permit?

7 A. In the ordinary process, it is a collaborative
8 decision, and approval has to be made by every
9 department that is involved.

13:09 10 Q. Does the City of Menlo Park have a special
11 events committee?

12 A. Yes, they do. It is -- yes.

13 Q. Who is currently on the special events
14 committee?

13:09 15 A. It is the designated person from each
16 department.

17 THE VIDEOGRAPHER: Excuse me, Chief. Is it
18 possible to just move your phone just a little bit away
19 from you? That may help in the future, if something --

13:09 20 MR. MASTER: Does it vibrate or something if it
21 goes?

22 THE WITNESS: Yeah.

23 MR. MASTER: Is that better?

24 THE VIDEOGRAPHER: Okay. Thank you.

13:09 25 Q. (By Mr. Robinson) Is the special event

1 committee different from the staff internal review group
2 that's listed on Exhibit 30?

3 A. So I need to go back and correct the committee.
4 The committee was created specifically to come up with
13:10 5 the process back in 2011, 2012. The special application
6 review is different than the actual committee, which
7 no -- does not exist anymore.

8 Q. So there's no longer a committee?

9 A. The committee was in place just to come up with
13:10 10 the new process.

11 Q. The committee is not the entity that decides
12 whether or not to grant an application.

13 A. That's correct.

14 Q. The -- okay.

13:11 15 Has there been a special events committee at
16 any point after the adoption of the current special
17 event process?

18 A. No.

19 Q. Did the police department handle Mr. Zeleny's
13:11 20 permit application for a special events permit?

21 MR. MASTER: Objection. Vague and ambiguous.

22 THE WITNESS: We were part of the City
23 departments that looked at it.

24 Q. (By Mr. Robinson) Of -- strike that.

13:11 25 Did any of the other City departments, besides

1 the police department, decide to deny the application?

2 **A.** I believe the application was denied through
3 the City Attorney's Office.

4 **Q.** Did the police department make a decision to
13:11 5 deny the application?

6 **A.** It was not the police department's decision.

7 **Q.** Why wasn't it the police department's decision?

8 **A.** The ultimate decision was made by the city
9 attorney, based on input by all the departments.

13:12 10 **Q.** Of the permit applications -- speaking
11 specifically about special events permits.

12 Of the applications that you're aware of since
13 2012 or 2013, how many of those were denied by the city
14 attorney?

13:12 15 **A.** As requested, two.

16 **Q.** When you say "as requested," do you mean that
17 one of the City entities requested that the city
18 attorney review it, and then the city attorney made a
19 decision?

13:13 20 **A.** No. By requested, I mean that the application
21 was put in one form, and then when it was denied, it was
22 revamped in a way that was acceptable to the City
23 departments.

24 **Q.** What -- was one of the applications that was
13:13 25 denied by the city attorney Mr. Zeleny's application?

1 **A.** Yes.

2 **Q.** What was the other one?

3 **A.** The bicycle race I mentioned before.

13:13 4 **Q.** In the situation of the bicycle race, was the
5 application submitted and then revised in some way and
6 resubmitted?

7 **A.** Yes.

8 **Q.** And the -- was the resubmitted application
9 denied?

13:13 10 **A.** No.

11 **Q.** So the resubmitted application was granted?

12 **A.** Correct. In a different format, a different
13 form.

14 **Q.** Mr. Zeleny's resubmitted application was
13:14 15 denied; true?

16 **A.** The -- I'm not sure he ever resubmitted an
17 application. He made some -- he answered some
18 questions, I believe, but not to the satisfaction of the
19 departments and the City Attorney's Office.

13:14 20 **Q.** And so despite the revisions to the
21 application, Mr. Zeleny's application was, again,
22 denied; true?

23 **A.** Eventually, yes.

24 **Q.** Was that denial by the City Attorney's Office?

13:14 25 **A.** It was through the City Attorney's Office, yes.

1 **Q.** Before Mr. Zeleny made the revisions to his
2 application -- so now talking about the original
3 application before he gave more information or revised
4 it in some way. The original application, was that
13:14 5 denied through the City Attorney's Office?

6 **A.** No, I don't believe so. The original
7 application was originally denied through the Community
8 Services Department.

9 **Q.** Who made the decision to deny it?

13:15 10 **A.** That was -- at that time, it was made by Matt
11 Milde.

12 **Q.** Did the City departments listed in Step C of
13 Exhibit 30 provide input to Mr. Milde to make his
14 decision?

13:15 15 **A.** Yes.

16 **Q.** Did you provide input on behalf of the police
17 department?

18 **A.** I -- yes, I did.

19 **Q.** What was your input to Mr. Milde?

13:15 20 **A.** My input was the concerns that have already
21 been discussed regarding the Vehicle Code sections,
22 Municipal Code sections that would be violated, the
23 Penal Code sections that would be violated, and then
24 on -- along with the public safety issues: Traffic,
13:16 25 crowd control, et cetera; things I've talked about this

1 morning.

2 Q. Did you make a directive or recommendation to
3 Mr. Milde about whether to grant or deny the
4 application?

13:16 5 A. I said as far -- from the police department
6 perspective, from our department, that the -- as stated
7 or as the -- as the application was written, that it
8 should be denied.

9 Q. Do you know whether any other departments
13:16 10 indicated -- strike that.

11 Do you know whether any other departments
12 within the City suggested to Mr. Milde that the
13 application should be denied?

14 A. Yes. I understand that there was also concerns
13:16 15 from Transportation, which is in Public Works, regarding
16 the -- the issue.

17 Q. Are you aware of any departments, other than
18 police department and Transportation -- strike that.

19 The City Transportation Department is not one
13:17 20 of the City entities listed, is it?

21 A. PW means Public Works, so Public Works
22 engineering would be -- Transportation would be under
23 that.

24 Q. So the -- you, on behalf of the police
13:17 25 department, suggested that the application, in its

1 original form, be denied, and the Public

2 Works-Engineering department also suggested concerns; is

3 that accurate?

4 **A.** Correct.

13:17 5 **Q.** Other than those two City entities, are you
6 aware of any other entities that suggested that the
7 application be denied?

8 MR. MASTER: You mean departments.

9 MR. ROBINSON: City departments.

13:17 10 **Q.** (By Mr. Robinson) Are you aware of any
11 departments, other than those two, that suggested that
12 the application be denied?

13 **A.** Not necessarily denied, but there was others
14 that had concerns.

13:17 15 **Q.** In general, is it the process that the City
16 departments provide input, and then Mr. Milde, at that
17 time, at least, would make the ultimate decision?

18 **A.** Based on the department input, yes.

19 **Q.** If a department recommended that the permit be
13:18 20 denied, would that cause the permit to be denied?

21 **A.** In most cases, yes.

22 **Q.** Were you the primary person, at the time of
23 Mr. Zeleny's original application, responsible for the
24 application in the police department?

13:18 25 **A.** I shared that responsibility with Sergeant

1 Ortega, but, eventually, I became the primary person.

2 Q. Why was that?

3 A. He retired.

4 Q. At that time, did Sergeant Ortega report to
13:18 5 you?

6 A. At what time?

7 Q. At the time that Mr. Zeleny submitted his
8 application in 2015.

9 A. 2015? Yes.

13:19 10 Q. You were his boss?

11 A. Yes.

12 Q. The reasons that you suggested to Mr. Milde
13 that the application be denied are the same reasons we
14 discussed this morning; correct?

13:19 15 A. Correct.

16 Q. When, in the process in dealing with
17 Mr. Zeleny's permit application, did you refer it to the
18 city attorney?

19 A. Not quite sure exactly when I sent it, but I
13:19 20 think the -- I think by nature of Mr. Zeleny's mass
21 e-mail, it may have been right away, because I believe
22 he may have copied the city attorney.

23 (Exhibits 33 and 34 were marked for
24 identification.)

13:20 25 Q. (By Mr. Robinson) Let's start with Exhibit 33.

1 And I'm just going to ask you, for the record, it's
2 Bates marked MP1817 through 1821; correct?

3 A. Correct.

4 Q. Do you recognize Exhibit 33?

13:20 5 A. I do.

6 Q. What is it?

7 A. It is a Special Event Permit Application
8 Frequently Asked Questions that I spoke about earlier.

9 Q. When -- going to the first page of this, under
13:21 10 the heading "What Qualifies as a Special Event," when
11 you received Mr. Zeleny's special event permit
12 application, did you understand that it incorporated the
13 use of a city street, sidewalk, or other right-of-way?

14 A. Well, it was the median. I'm not sure that
13:21 15 would be considered a -- perhaps, maybe, the
16 right-of-way.

17 Q. You discussed before the potential of people
18 either obstructing the sidewalk or walking out --
19 jaywalking over the street to get to the median;
13:21 20 correct?

21 A. Correct.

22 Q. Both of those things would involve either the
23 use of a sidewalk or the use of a street; true?

24 A. Correct.

13:21 25 Q. So the permit application that Mr. Zeleny

1 submitted, in your view, would it satisfy the
2 requirement of use of a city street, sidewalk, or other
3 right-of-way?

4 **A.** Yes.

13:22 5 **Q.** We also talked about Mr. Zeleny's event being
6 for an indefinite duration. Do you recall that?

7 **A.** Yes.

8 **Q.** Did you understand, based on the application,
9 that Mr. Zeleny intended to stay at the site for
13:22 10 multiple days?

11 **A.** I did not know what his intent was, but it said
12 "indefinite."

13 **Q.** When you received it, did you understand the
14 reference to "indefinite" to refer to more than one day?

13:22 15 **MR. MASTER:** Objection. This lacks foundation.
16 Calls for speculation.

17 You can answer.

18 **THE WITNESS:** Indefinite means there's no
19 ending time. That's the definition of indefinite.

13:22 20 **Q.** (By Mr. Robinson) Okay.

21 So we're on the same page that interpreting the
22 term "indefinite," in your view, it means multiple days
23 with no fixed end day?

24 **A.** It means forever to me.

13:22 25 **Q.** Okay.

1 So if you go down to the second-to-last bullet
2 point, "Events occurring for more than one day,"
3 Mr. Zeleny's proposed event would satisfy that
4 criteria --

13:22 5 **A.** Yes.

6 **Q.** -- true?

7 It would require a permit on that basis; right?

8 **A.** Yes.

9 **Q.** You were familiar with Mr. Zeleny's protests
13:23 10 prior to his filing a permit application.

11 **A.** Yes.

12 **Q.** Those protests involved carrying of unloaded
13 firearms; correct?

14 **A.** In the past, yes.

13:23 15 **Q.** In your view, as an official with the Police
16 Department of the City of Menlo Park, did you believe
17 that a police presence was necessary during Mr. Zeleny's
18 previous protests?

19 **A.** Yes.

13:23 20 **Q.** Did you think a police presence was required
21 for the entertainment event or the special event that he
22 proposed putting on through his permit application?

23 **A.** If it was -- yes, there would have been a
24 police presence.

13:23 25 **Q.** So the last bullet point there, "Events needing

1 police regulation, monitoring, or control," in your
2 view, the event that Mr. Zeleny filed his application
3 for satisfied that criteria; correct?

4 **A.** Yes.

13:23 5 **Q.** So to summarize, at least three of these bullet
6 points would be triggered by Mr. Zeleny's proposed
7 special event permit; correct?

8 **A.** Yes.

9 **Q.** And under the definition set out in the FAQ, if
13:24 10 an event meets any one of these criteria, it qualifies
11 as a special event requiring a permit; true?

12 **A.** Requires you to complete a special event
13 application.

14 **Q.** Is the City -- is the definition in this FAQ of
13:24 15 what qualifies as a special event the City's definition
16 of a special event?

17 **A.** Yes.

18 **Q.** So under this -- at least under the published
19 FAQ, Mr. Zeleny's event would qualify as a special event
13:24 20 on at least three criteria; correct?

21 **A.** Yes.

22 **Q.** Let me have you turn to the page that's marked
23 MP1820. There's the section titled "What would cause a
24 permit to get denied?"

13:25 25 Do you see that?

1 **A.** Yes.

2 **Q.** Under that heading, are the criteria listed
3 some of the criteria that would be considered in
4 granting or denying a special event permit?

13:25 5 **A.** I'm sorry. Say that again.

6 **Q.** Are the criteria listed or the factors listed
7 under the heading "What would cause a permit to get
8 denied?" the factors that the City considers in deciding
9 whether to grant or deny a permit application?

13:25 10 **A.** Well, it's answering the question: What would
11 cause a permit to get denied? and gives some examples of
12 common factors why permits would be denied.

13 **Q.** Are the factors listed there, in your knowledge
14 and experience as the person most qualified on behalf of
13:25 15 the City, some of the factors that would cause a permit
16 to be denied?

17 **A.** Yes.

18 **Q.** Are there other factors?

19 **A.** Yes.

13:26 20 **Q.** What are the other factors?

21 **A.** Other factors would be those that had to deal
22 with already-in-place municipal codes, county
23 ordinances, state laws, federal laws, et cetera.

24 **Q.** Other than the factors listed here and
13:26 25 compliance with laws and regulations and ordinances, are

1 there any other factors that you're aware of that could
2 cause a permit to be denied?

3 **A.** From the police department's perspective,
4 public safety would also be a reason why it could be
13:27 5 denied.

6 **Q.** Does the police department determine, in
7 connection with permit applications, whether the
8 proposed event poses a risk to public safety?

9 **A.** Correct.

13:27 10 **Q.** Beyond public safety in general, are there any
11 specific criteria that you consider?

12 **A.** Other than what's been discussed, none that I
13 could recall right now.

14 **Q.** Other than the permit application itself and
13:27 15 this FAQ that we're looking at, are you aware of any
16 other written document available to the public that
17 lists the factors considered in granting or denial of an
18 application?

19 MR. MASTER: Objection. Asked and answered.

13:28 20 Go ahead.

21 THE WITNESS: There's the application itself on
22 the website, and what the website says itself, which I
23 see is **Exhibit 34**.

24 **Q.** (By Mr. Robinson) You anticipated my next
13:28 25 question. **Exhibit 34** is two pages, MP1830 and 1831;

1 correct?

2 **A.** Yes.

3 **Q.** This is the special event permit website?

4 **A.** That is correct.

13:28 5 **Q.** Does the website accurately describe the
6 process and qualifications for special events?

7 **A.** Yes.

8 **Q.** If you could turn to the last page, please.

9 There's a reference at the very bottom -- maybe it's not
13:29 10 the bottom; about a third of the way down the physical
11 page, there's a reference to "film permits."

12 Do you see that?

13 **A.** Yes.

14 **Q.** To your knowledge, does -- strike that.

13:29 15 As the person most qualified on behalf of the
16 City of Menlo Park, does the City have any written
17 criteria for grant or denial of film permits?

18 **A.** Yes.

19 **Q.** Where are those criteria?

13:29 20 **A.** They are available from the Department of
21 Public Works in the form of an FAQ, frequently asked
22 questions, and also an encroachment permit.

23 MR. ROBINSON: Sorry. Could we go off for 30
24 seconds.

13:29 25 THE VIDEOGRAPHER: We are now going off the

1 record. The time is 1:29 p.m.

2 (Recess taken from 1:29 p.m. to 1:30 p.m.)

3 THE VIDEOGRAPHER: We are now going back on the
4 record. The time is 1:30 p.m.

13:30 5 MR. ROBINSON: Okay.

6 Why don't we go ahead and mark that as Exhibit
7 35, please.

8 (Exhibit 35 was marked for identification.)

9 Q. (By Mr. Robinson) Chief Bertini, do you
13:31 10 recognize Exhibit 35?

11 A. I do.

12 Q. For the record, it's two pages, MP5241 and
13 5242; correct?

14 A. Correct.

13:31 15 Q. Is this the FAQ that you just mentioned?

16 A. Yes.

17 Q. We'll get into the encroachment permit later
18 on, but this -- basically, this document that we're
19 looking at, Exhibit 35 and then the encroachment permit,
13:31 20 those are the two documents that are available that list
21 the criteria considered by the City in granting or
22 denying a film permit; correct?

23 A. Correct.

24 Q. Are there any other criteria that you're aware
13:32 25 of, beyond what's set out in Exhibit 35 or in the

1 encroachment application?

2 A. No.

3 Q. How many film permits -- strike that.

4 When did the City put a film permit process in
13:32 5 place?

6 A. In the time frame of 2006, 2007.

7 Q. How many film permit applications have been
8 filed since 2006, 2007?

9 A. I don't know the exact number.

13:33 10 Q. Is it in the hundreds?

11 A. For the last --

12 Q. Why don't we narrow the time frame. Let's say
13 from 2013 to today, approximately how many permits?

14 A. I would say two dozen.

13:33 15 Q. Is that applications or issued permits?

16 A. Applications.

17 Q. Of those approximately two dozen, could you
18 estimate how many were denied?

19 A. I don't know.

13:33 20 Q. Have you been involved in the grant or denial
21 of any -- strike that.

22 Have you been involved in the process of
23 considering film permit applications?

24 A. Yes.

13:34 25 Q. On how many occasions?

1 **A.** Probably, maybe, six or seven times.

2 **Q.** Is that in the same time frame, from 2013 to
3 today?

4 **A.** Correct.

13:34 5 **Q.** Why -- why do you become involved in film
6 permit application processing?

7 **A.** The Public Works Department, when they receive
8 a film permit application, circulates it to -- just like
9 the special events, circulates to all the departments

13:34 10 that may be affected. One of those is the police
11 department. And, normally, the film permit and
12 encroachment permit is forwarded to the police
13 department, along with other departments, to determine
14 whether or not the permit is something that is -- can

13:35 15 be -- can be done, can be approved, and if so, would
16 there be any mitigating circumstances that would need to
17 be in place.

18 **Q.** Who makes the ultimate decision for the City
19 about whether to grant or deny a film permit?

13:35 20 **A.** The Public Works Department.

21 **Q.** Stepping back for a second, did the police
22 department handle Mr. Zeleny's request for a special
23 events permit?

24 MR. MASTER: Objection. Asked and answered.

13:35 25 Vague and ambiguous as to "handled."

1 You can answer.

2 THE WITNESS: We were one of the departments
3 that had a hand in examining the permit.

4 **Q.** (By Mr. Robinson) Did you have a hand, the
13:36 5 police department, in the ultimate decision?

6 MR. MASTER: Of what? Hold on. Decision of
7 what?

8 **Q.** (By Mr. Robinson) You can go ahead and answer.

9 MR. MASTER: No. It's vague and ambiguous.
13:36 10 It's overbroad. It's also been asked and answered.

11 Why are we going through this again?

12 MR. ROBINSON: Counsel, I've asked you a number
13 of times before we broke to stop giving speaking
14 objections and speeches on the record. I'm going to
13:36 15 renew my request that you stop giving speaking
16 objections and speeches on the record.

17 MR. MASTER: And I'm going to renew my request
18 for you to stop repeating the same questions over and
19 over again, as the record will clearly demonstrate.

13:36 20 You can answer. But sometime soon, we're going
21 to stop this. Go ahead.

22 THE WITNESS: Are you speaking of the special
23 event permit?

24 **Q.** (By Mr. Robinson) Correct.

13:36 25 **A.** Okay.

1 And as I stated, we were one of the departments
2 that made recommendations regarding that permit
3 application.

4 **Q.** Was the police department the ultimate
13:37 5 decision-maker on that application?

6 MR. MASTER: Objection. Asked and answered.
7 We ask -- we answered this, literally, 20 minutes ago.
8 Want to go back and read the record?

9 MR. ROBINSON: Again, I would appreciate if you
13:37 10 would stop giving speeches on the record and speaking
11 objections.

12 MR. MASTER: I'm going to stop -- hold on,
13 Counselor. I'm going to stop you from repeating the
14 same questions over and over again. I'd like to go back
13:37 15 on the record now before we go further and see if that
16 question had been asked 20 minutes ago to prove my
17 point, because my client's time is valuable. He has to
18 run a police department, and you're here asking him
19 question after question, which is fine, but when you
13:37 20 repeat them over and over again, it gets a little
21 burdensome and harassing.

22 So that's my objection to this. I'm not going
23 to instruct him not to answer now, but very shortly, I
24 will if you ask this question one more time.

13:37 25 MR. ROBINSON: You are welcome to make any

1 objection you want to make, and you're welcome to
2 instruct him not to answer if you believe that's proper,
3 and we'll have our remedies based on your instruction
4 not to answer. What's not appropriate is for you to
13:37 5 continue making speeches on the record.

6 I've asked you multiple times today to stop
7 doing that. If you want to instruct him not to answer,
8 by all means, instruct him not to answer and we'll take
9 it up with the Court and you can make your argument.

13:38 10 The time to make your argument is not on the
11 record while I'm conducting a deposition.

12 MR. MASTER: Okay.

13 Go ahead. You can answer the question.

14 And this will be the last time today or any
13:38 15 time he'll be answering it.

16 Go ahead. You need a readback?

17 THE WITNESS: Please.

18 (Record read.)

19 THE WITNESS: No.

13:38 20 **Q.** (By Mr. Robinson) Has the police department
21 been the ultimate decision-maker on any permit
22 application for a special events permit?

23 **A.** No.

24 THE VIDEOGRAPHER: Again, I'd like to make
13:39 25 another request that all cell phones are turned off when

1 we are on the record. I can hear static, low-level
2 static.

3 MR. MASTER: His phone's on.

4 MR. ZELENY: This is airplane mode.

13:39 5 THE VIDEOGRAPHER: Yeah, but if you're using --
6 if you're on the internet, you're not on airplane mode.

7 MR. ZELENY: Okay. I'll do that.

8 THE VIDEOGRAPHER: Yeah. I need them turned
9 off. It's affecting the record.

13:39 10 MR. MASTER: He can't turn his off.

11 THE VIDEOGRAPHER: I understand. If it's away
12 from the microphone, it usually stops what I can hear.

13 MR. ROBINSON: Do we have static now?

14 THE VIDEOGRAPHER: Not right now, but it's low
13:39 15 level interference that comes in when there's a
16 connection with the cell phone. So, yeah, just to
17 preserve the record, if we can keep that going.

18 MR. MASTER: Why don't we go off for just a
19 second. Maybe I can log off of wi-fi.

13:39 20 THE VIDEOGRAPHER: Okay.

21 Wi-fi usually doesn't affect it. It's the cell
22 phone communication, just to let you know.

23 We are now going off the record. The time is
24 1:39 p.m.

13:40 25 (Recess taken from 1:39 p.m. to 1:40 p.m.)

1 THE VIDEOGRAPHER: We are now going back on the
2 record. The time is 1:40 p.m.

3 Q. (By Mr. Robinson) Of the six and seven film
4 permit applications that you've been involved in, what
13:40 5 was the nature of -- strike that.

6 What was the reason that the police department
7 got involved?

8 A. The police department is always advised of a
9 film permit, but our involvement would occur if the film
13:41 10 production was a -- became a traffic issue, crowd
11 control issue, public safety issue.

12 Q. I assume that Mr. Zeleny's permit application
13 for a film permit was one of the ones in which the
14 police department got involved; is that correct?

13:41 15 A. The incomplete process, yes.

16 Q. When you say "the incomplete process," what do
17 you mean?

18 A. There has been no decision on a film permit as
19 of yet.

13:41 20 Q. What is the City's ordinary timeline for
21 granting or denying a film permit?

22 A. I don't know what the ordinary time limit is.

23 Q. How long has Mr. Zeleny's film permit
24 application been pending?

13:42 25 A. I would have to see the date of when he

1 switched his special events permit into a film permit
2 request.

13:42 3 Q. On average, in the past five years, how long
4 does it generally take the City to process a film permit
5 application?

6 A. I'm not aware of the average time it would take
7 for the permit to go through the process. It would
8 depend on the type of production that was asked for;
9 whether mitigating circumstances; whether there was more
13:42 10 information requested. There's a lot of mitigating
11 factors as to how long it would take.

12 Q. Of the six or seven permit applications that
13 you've been involved with, how long, on average, did
14 those take?

13:42 15 A. Well, the police department time varied,
16 depending on the application. As far as the final
17 application time from start, when it was received, to
18 when it was approved or denied, I don't know.

19 Q. How long was the police department's time, on
13:43 20 average, in those six or seven applications?

21 A. It varied from immediate, depending on, you
22 know, what the issue was, to several weeks, several
23 months.

24 Q. How many of the permit applications that the
13:43 25 police department has been involved in took several

1 months to process?

2 **A.** Not too many. That would be those that
3 required more mitigation as to the production and the
4 application as far as the issues that the police
13:43 5 department would be looking at.

6 **Q.** How many of them do you recall?

7 **A.** Maybe one or two.

8 **Q.** Is one of them Mr. Zeleny's application?

9 **A.** Yes.

13:43 10 **Q.** Can you recall any others?

11 **A.** Yes. There was an application for a film
12 permit that was going to affect a major artery, so that
13 took a little longer.

14 **Q.** How long did that one take?

13:44 15 **A.** Probably a couple of months of back-and-forth
16 with the producers to come to a -- come to a -- a
17 compromise as to what they could and could not do.

18 **Q.** Was a compromise ultimately reached on that?

19 **A.** Yes.

13:44 20 **Q.** Did they receive a film permit?

21 **A.** Yes.

22 **Q.** When you referred before to Mr. Zeleny's film
23 permit application as "incomplete," was there anything
24 else about the application that is incomplete, other
13:44 25 than the lack of a decision one way or the other?

1 **A.** There was -- my understanding -- my
2 recollection is that the last correspondence from the
3 Public Works Department asked for several -- asked
4 several questions and several mitigating factors of
13:45 5 Mr. Zeleny, which were never answered.

6 **Q.** Is there anything else, aside from the fact
7 that the City hasn't acted on the permit application and
8 the lack of answers to that last round of e-mail
9 questions, that makes the application incomplete?

13:45 10 **A.** I would argue that what you said about the City
11 not acting is not correct. We've acted. It's a two-way
12 street. We act, we ask questions, we expect a response,
13 and we have not yet received a response.

14 **Q.** Let me rephrase the question. Aside from there
13:45 15 not being an ultimate decision of whether to grant or
16 deny the application and the fact that Mr. Zeleny hasn't
17 responded to the last round of questions e-mailed to
18 him, is there anything else about the application that
19 makes it incomplete?

13:46 20 **A.** No. That pretty much makes it incomplete.

21 **Q.** The application itself is a form that you fill
22 out; correct?

23 **A.** Correct.

24 **Q.** Was the form filled out completely?

13:46 25 **A.** Actually, I don't believe he ever filled out a

1 specific form for a film permit. He just used the
2 special event permit and said "I would like this to now
3 be a film permit."

4 MR. ROBINSON: Why don't we mark this as

13:47 5 Exhibit 36.

6 (Exhibit 36 was marked for identification.)

7 Q. (By Mr. Robinson) For the record, Exhibit 36
8 is MP1248 through MP1253; correct?

9 A. Yes.

13:47 10 Q. Have you seen this document before?

11 A. Now that I see it in front of me, yes, I do
12 recall seeing it.

13 Q. It's one of the documents that the City
14 produced during discovery in this case; correct?

13:47 15 A. Correct.

16 Q. It's a film permit application; correct?

17 A. Correct.

18 Q. In review of this Exhibit 36, is there anything
19 about it that, in your view, is incomplete?

13:48 20 A. As far as this application itself?

21 Q. Correct.

22 A. No.

23 Q. This is the ordinary application that someone
24 would use to request a film permit from the City of

13:48 25 Menlo Park; correct?

1 **A.** Yes.

2 **Q.** Within the City of Menlo Park, do you have a
3 policy for dealing with carrying of firearms?

4 Citizens or people within the City, other than
13:49 5 police officers, carrying firearms, is there a municipal
6 policy of some kind?

7 **A.** There is a municipal code about open -- carry
8 of firearms.

9 **Q.** Is there any other municipal policy, other than
13:49 10 what's written in the municipal code?

11 **A.** No.

12 **Q.** Does the police department have any policy in
13 dealing with citizens that are openly carrying unloaded
14 firearms?

13:49 15 MR. MASTER: Make an objection, vague and
16 ambiguous as to time.

17 Go ahead.

18 THE WITNESS: There -- I know there -- in fact,
19 there has been a training -- a training bulletin, and
13:49 20 there, generally, are policies on how to handle calls
21 for service. There's policies on how to process a
22 concealed carry permit; things of that nature.

23 **Q.** (By Mr. Robinson) To your knowledge -- let's
24 start at the time frame of 2012 and then go to present.

13:50 25 So from 2012 to present, are you aware of any

1 training within the police department about how to
2 handle people who are openly carrying unloaded firearms?

3 **A.** There was no specific training on that,
4 although I know there was a training bulletin that was
13:50 5 issued regarding the prohibition of open carry once the
6 new law came into effect.

7 **Q.** Was the training bulletin a document that
8 attached a news article about the change in the law?

9 **A.** Yes.

13:50 10 **Q.** Are there any other training documents that
11 you're aware of, other than that training bulletin?

12 **A.** No.

13 **Q.** Is open carry -- I'm going to refer to open
14 carry as the open carrying of unloaded firearms; is that
13:51 15 okay? It will speed the deposition along.

16 **A.** Certainly.

17 **Q.** Aside -- are there any other trainings that may
18 not be specific to open carry but that cover the topic
19 of open carry that you've had within the police
13:51 20 department in the past five years?

21 **A.** No.

22 **Q.** Has there been any training within the police
23 department in the past five years about dealing with
24 protests or demonstrations?

13:51 25 **A.** Specifically about protests or demonstrations?

1 No.

2 Q. What about in the past ten years?

3 A. Yes.

4 Q. What training was that?

13:51 5 A. Well, not at this police department.

6 MR. MASTER: Who are you talking about? Why
7 don't you rephrase the question.

8 Q. (By Mr. Robinson) Has the City of Menlo --
9 strike that.

13:51 10 Has the City of Menlo Park Police Department,
11 to your knowledge, had training about how to handle
12 protests or demonstrations at any point in the past ten
13 years?

14 MR. MASTER: I'll just object. It lacks
13:52 15 foundation. Calls for speculation.

16 But you can answer.

17 THE WITNESS: So I can only speak to the last
18 eight years; right?

19 Q. (By Mr. Robinson) Why don't we start there.

13:52 20 A. Okay.

21 And there has been -- there has been some
22 training on riot control, which would sometimes be
23 necessary for those type of events.

24 Q. Other than training on riot control, to your
13:52 25 knowledge, has there been any training within the City

1 of Menlo Park Police Department in the past eight years
2 about protests or demonstrations?

3 A. No.

4 Q. Has there been any training related to

13:52 5 Mr. Zeleny?

6 A. Specifically?

7 Q. Correct.

8 A. No.

9 Q. Have there been any other protests or

13:53 10 demonstrations within the City that you're aware of,
11 other than Mr. Zeleny's?

12 A. Yes.

13 Q. How many, if you could estimate?

14 A. In --

13:53 15 MR. MASTER: Hold on. I was going to object as
16 to time frame. Vague and ambiguous.

17 Q. (By Mr. Robinson) In the same time frame.

18 Since you've been -- you've been with the City for 8
19 years, you said?

13:53 20 A. Correct.

21 Q. During your time with the City, have there been
22 other protests or demonstrations aside from
23 Mr. Zeleny's?

24 A. Numerous.

13:53 25 Q. If you could estimate how many.

1 **A.** Upwards of 50.

2 **Q.** In general terms, how does the Menlo Police --
3 Menlo Park Police Department respond to protests or
4 demonstrations?

13:53 5 MR. MASTER: Just object. Vague and ambiguous.
6 Overbroad. Incomplete hypothetical.

7 You can answer.

8 THE WITNESS: That would depend on what kind of
9 protest it is. Initially, we would go out and assess.

13:54 10 **Q.** (By Mr. Robinson) What do you assess for?

11 **A.** Assess the type of protest, the size of
12 protest, the -- either violence occurring or the
13 possibility of violence, the impact on city resources,
14 impact on traffic, impact on the normal flow of

13:54 15 residents and/or business people, the impact to public
16 safety.

17 **Q.** What types of factors does the City of Menlo
18 Park Police Department generally consider when assessing
19 the type of protest?

13:54 20 **A.** That's the list I just went through.

21 **Q.** So by type, am I right on understanding that
22 you're referring to the size, violence or potential for
23 violence, et cetera; that list of factors?

24 **A.** Correct.

13:55 25 **Q.** Does it matter where the protest is taking

1 place?

2 **A.** Yes.

3 **Q.** Does it matter the nature of the protest
4 activity? For example, musicians or amplified sound or
13:55 5 things of that nature? Are those factors that you
6 consider?

7 **A.** If they are in violation of the law, yes.

8 **Q.** Does the City of Menlo Park maintain a file on
9 Mr. Zeleny?

13:56 10 **MR. MASTER:** Objection. Vague and ambiguous.
11 You can go ahead.

12 **THE WITNESS:** There are police files that
13 are -- have his name on it that would be maintained by
14 the police department. The -- I would assume that --
13:56 15 or --

16 **MR. MASTER:** Don't assume. Do you know?

17 **THE WITNESS:** Sorry. I know that the City
18 Attorney's Office has a file on Mr. Zeleny based on this
19 case, and I know that I have a file on Mr. Zeleny.

13:57 20 **Q.** (By Mr. Robinson) Why do you have a file on
21 Mr. Zeleny?

22 **A.** This file was created when I first arrived in
23 Menlo Park, and it included the information on his
24 activities that we were made aware of.

13:57 25 **Q.** Was it your decision to maintain that file?

1 **A.** My personal file?

2 **Q.** Correct.

3 **A.** Yes.

4 **Q.** Do you maintain file -- personal files on any
13:57 5 other individuals who've had contact with the Menlo Park
6 Police Department?

7 **A.** Yes.

8 **Q.** How many?

9 **A.** I'd say maybe two dozen.

13:57 10 **Q.** Other than Mr. Zeleny, are the other files on
11 individuals who've committed criminal acts within the
12 city?

13 **A.** Both -- that's one of the reasons, yes.

14 **Q.** What are the other reasons?

13:58 15 **A.** If they have made complaints against officers,
16 if they have become unusually active for the police
17 department and there is some extraordinary reason why we
18 would need to have information readily available on
19 those persons.

13:58 20 **Q.** Is there an extraordinary reason why you would
21 need readily available information on Mr. Zeleny?

22 **A.** Yes.

23 **Q.** What is that reason?

24 **A.** Public safety.

13:59 25 **Q.** When you refer to "public safety," are you

1 referring to Mr. Zeleny carrying unloaded firearms and
2 ammunition?

3 A. Yes.

4 Q. Are you referring to anything else?

13:59 5 A. That's -- that would be the extraordinary
6 situation that would cause him to be a public safety
7 concern.

8 Q. How many years, to your knowledge, has
9 Mr. Zeleny been protesting NEA?

13:59 10 A. No idea.

11 Q. Has he been doing it since you started?

12 MR. MASTER: Objection. Vague and ambiguous as
13 to where. You're just asking generally?

14 Q. (By Mr. Robinson) You can go ahead and answer.

13:59 15 MR. MASTER: Okay.

16 THE WITNESS: Are you speaking Menlo Park?

17 Q. (By Mr. Robinson) Has Mr. Zeleny been
18 protesting NEA, to your knowledge, since you started in
19 your role with the City of Menlo Park Police Department?

13:59 20 A. In Menlo Park?

21 Q. Sure. In Menlo Park.

22 A. Yes.

23 Q. Are you aware of his protests anywhere other
24 than Menlo Park?

13:59 25 A. I'm aware that there has been protests, but I

1 have no knowledge of exactly where or when.

2 Q. At any point, are you aware of any instance
3 during Mr. Zeleny's protests where he engaged in any
4 form of violence against anyone?

14:00 5 A. In Menlo Park?

6 Q. Ever. In any of the protests that you're aware
7 of?

8 A. I'm not aware.

9 Q. You're not aware of any instance?

14:00 10 A. I'm not aware of it being -- I'm not aware of
11 it personally, no.

12 Q. Are you aware, through any other source, of
13 Mr. Zeleny ever behaving in a violent manner in any of
14 his protests?

14:00 15 A. I'm not aware of any, no.

16 Q. What types of materials do you keep in your
17 file on Mr. Zeleny?

18 A. Copies of police reports; many times, I would
19 print out copies of e-mails that were sent back and
14:01 20 forth between Mr. Zeleny and the City; relevant statutes
21 that applied, correspondence I may have received from
22 other -- other law enforcement agencies or government
23 agencies.

24 Q. Did you produce your personal file on
14:01 25 Mr. Zeleny in this litigation?

1 **A.** Yes.

2 **Q.** Does your personal file on Mr. Zeleny contain a
3 copy of California Penal Code 313.1?

4 **A.** Yes.

14:01 5 **Q.** Is that one of the statutes that you considered
6 might apply to Mr. Zeleny's protests?

7 **A.** Yes.

8 **Q.** Was that consideration based on the cartoons or
9 animations that Mr. Zeleny had displayed or suggested
14:01 10 that he would display?

11 **A.** Yes. That were later -- yeah. That was later
12 sent to us, yes.

13 **Q.** We're talking about the animation of cartoons
14 having sex with each other; right?

14:02 15 **A.** Yes.

16 **Q.** And you believed that Penal Code 313.1 might
17 apply to that animation; correct?

18 **A.** I believe that it may apply, yes.

19 **Q.** Why did you believe that it could apply -- may
14:02 20 apply to that animation?

21 **A.** Because if a -- if the display or if the image
22 was displayed, and there was a complaining victim, in
23 other words, a child observed it and a parent reported
24 it to us, then it could, in fact, be a violation of the
14:02 25 Penal Code.

1 **Q.** Are you still of the view that that animation
2 that we're talking about could be a violation of the
3 Penal Code if there were a child present and a
4 complaining victim? You still believe that?

14:02 5 **A.** It could be. That would be a -- that would be
6 a question of the Courts.

7 MR. ROBINSON: Why don't I ask that we mark
8 this as 37.

9 (Exhibit 37 was marked for identification.)

14:03 10 **Q.** (By Mr. Robinson) For the record, Exhibit 37
11 is two pages, MP5277 to 5278; correct?

12 **A.** Yes.

13 **Q.** Is this a copy of Penal Code 313.1 that was in
14 your file on Mr. Zeleny?

14:03 15 **A.** Yes.

16 MR. ROBINSON: And why don't we go ahead and
17 mark this as Exhibit 38.

18 (Exhibit 38 was marked for identification.)

19 **Q.** (By Mr. Robinson) For the record, Exhibit 38
14:04 20 is one page MP5282; correct?

21 **A.** Yes.

22 **Q.** This is another document that was contained in
23 your file on Mr. Zeleny; correct?

24 **A.** Yes.

14:04 25 **Q.** This is a still image of -- Exhibit 38 is a

1 still image of the animation that we've just been
2 talking about; right?

3 A. Correct.

14:04 4 Q. And was it your view, at the time that
5 Mr. Zeleny filed his permit application for a special
6 event permit, that the image reflected -- the animation
7 that's shown in Exhibit 38 could be obscene as to
8 minors?

9 A. It could be.

14:04 10 Q. Did you take that position in a public hearing
11 related to Mr. Zeleny's permit application?

12 A. Yes. I stated it could be.

13 Q. Do you have a view, one way or another, at this
14 point, about whether it is obscene as to minors or not?

14:05 15 A. It is actually -- as a police officer, I'm
16 unable to have my peace disturbed, nor be offended, so I
17 have no personal -- I have -- personally, I can't be
18 offended, so it would not be up to me whether it's
19 offensive or not. It would be up to a Court.

14:05 20 Q. When you say you can't be offended, what do you
21 mean?

22 A. In other words, I can't be the victim.

23 Q. Okay.

24 In your capacity as an individual witness, is
14:05 25 the image offensive? Not asking in your capacity as a

1 police officer, but as an individual witness in this
2 case, is the animation that's reflected in Exhibit 38
3 offensive?

4 MR. MASTER: Objection. Vague. Ambiguous.

14:05 5 Confusing. Overbroad. Calls for speculation.

6 If you can answer it.

7 THE WITNESS: For an adult, perhaps not; for a
8 child, yeah.

9 Q. (By Mr. Robinson) Have you received feedback
14:06 10 from anyone, either in the government in the City of
11 Menlo Park or the community of Menlo Park, that the
12 animation reflected in Exhibit 38 is offensive?

13 MR. MASTER: Same objection. Vague and
14 ambiguous.

14:06 15 THE WITNESS: No.

16 Q. (By Mr. Robinson) Do you personally find it
17 offensive?

18 MR. MASTER: Objection. Asked and answered.

19 Don't answer that.

14:06 20 We're done with this. He's already answered
21 that question.

22 MR. ROBINSON: You're instructing him not to
23 answer?

24 MR. MASTER: Absolutely.

14:06 25 Q. (By Mr. Robinson) Are you going to follow your

1 attorneys instruction not to answer?

2 **A.** Yes.

3 **Q.** In Mr. Zeleny's permit application process, you
4 acted as a spokesperson for the City in the hearing with
14:06 5 the city manager; correct?

6 **A.** For the special events permit?

7 **Q.** Correct.

8 **A.** Yes.

9 **Q.** And one of the issues that you raised in that
14:07 10 application process was that this image and the
11 associated animation might be obscene as to minors;
12 correct?

13 **A.** It could be, yes.

14 **Q.** Have you formed any view, in your capacity as
14:07 15 the Chief of Police of Menlo Park, about whether the
16 image is offensive?

17 **MR. MASTER:** Objection. Asked and answered.

18 Go ahead one more time.

19 **THE WITNESS:** As I stated, no.

14:07 20 **Q.** (By Mr. Robinson) Who would make the decision
21 about whether to charge Mr. Zeleny with obscenity as to
22 minors related to the animation?

23 **A.** District Attorney's Office.

24 **Q.** Is there someone in the City of Menlo Park that
14:07 25 would make a decision about whether to refer it for

1 prosecution?

2 **A.** Any police officer.

3 **Q.** Looking at **Exhibit 37**, in Clause A, there's a
4 reference to "harmful matter to the minor."

14:08 5 Do you see that?

6 **A.** Yes.

7 **Q.** What is your understanding of material that
8 would be considered harmful as to the minor? Is there
9 any more concrete definition than that?

14:08 10 MR. MASTER: Just object to the extent it calls
11 for a legal conclusion and speculation.

12 You can answer.

13 THE WITNESS: I believe if you were to look up
14 the jury instruction, there would be another definition
14:08 15 of that.

16 **Q.** (By Mr. Robinson) It refers to matter that is
17 summarized -- "invokes the prurient interests"; correct?

18 **A.** That's one of the criteria.

19 **Q.** But did the City of Menlo Park ever reach a
14:08 20 determination about whether the animation associated
21 with **Exhibit 38** appeals to a prurient interest?

22 **A.** That's -- that's not our purview. That's not
23 our job to do, so the answer is no.

24 MR. MASTER: Damion, is now a good time for a
14:09 25 break? We've been going about an hour.

1 MR. ROBINSON: Yeah.

2 MR. MASTER: Is now a good time?

3 THE VIDEOGRAPHER: We're now going off the
4 record. The time is 2:08 p.m.

14:20 5 (Recess taken from 2:08 p.m. to 2:20 p.m.)

6 THE VIDEOGRAPHER: We are now going back on the
7 record. The time is 2:20 p.m.

8 Q. (By Mr. Robinson) Was the possibility of
9 Mr. Zeleny's animation being obscene as to minors a
14:20 10 factor that was considered by the City in connection
11 with his special event permit application?

12 A. It did not come up until the appeal, because
13 that's when we were looking -- we found the animation
14 that he was proposing to use.

14:21 15 Q. And in the appeal process, was it considered a
16 factor in deciding whether or not to uphold the denial
17 of the permit application?

18 A. My understanding, that it was not one of the
19 denial points that was made by the city manager's
14:21 20 decision.

21 Q. It was a factor that was raised in the city
22 manager meeting; correct?

23 A. Yes.

24 Q. It was raised by you; right?

14:21 25 A. Yes.

1 **Q.** At the point that you raised it in that
2 meeting, you had not reached a determination about
3 whether it was actually obscene as to minors?

4 **A.** I cannot reach that determination.

14:21 5 **Q.** And you hadn't reached such a determination at
6 the time you raised it as a potential reason to uphold
7 the denial; correct?

8 MR. MASTER: Objection. Asked and answered.

9 THE WITNESS: I cannot make that determination.
14:22 10 That would have to be made by a jury.

11 **Q.** (By Mr. Robinson) I understand that you can't
12 make the determination. My question was whether, at the
13 time you raised it as a possible basis to uphold the
14 denial of Mr. Zeleny's permit application, you had no
14:22 15 view about whether it was or was not obscene as to
16 minors? I'm just trying to verify that that's accurate.

17 **A.** Yes.

18 **Q.** So you raised it as a basis to uphold the
19 denial, despite the fact you had no view about whether
14:22 20 it was obscene as to minors or not; correct?

21 **A.** I am -- it's not my purview to say whether it's
22 going to be obscene or not; it's a jury. But I raised
23 it as a factor for the city manager to consider.

24 **Q.** The reason that you raised it as a factor is
14:22 25 that you believed it was a factor that could support

1 affirming the denial of his permit application; correct?

2 **A.** That it could go towards the city manager's
3 decision-making process in the situation.

4 **Q.** Did you think it was a factor in favor of
14:23 5 granting him a special event permit?

6 **A.** No.

7 **Q.** Did you think it was a factor that potentially
8 weighed in favor of denying his special event permit
9 application?

14:23 10 **A.** Yes.

11 MR. MASTER: Sorry. It beeped, so I'm just
12 showing him the phone.

13 THE WITNESS: Okay. Thank you.

14 MR. ROBINSON: Okay.

14:23 15 Why don't we mark this as **Exhibit 39**?

16 (**Exhibit 39** was marked for identification.)

17 **Q.** (By Mr. Robinson) For the record, **Exhibit 39**
18 is three pages, MP5141 through 5143; correct?

19 **A.** Yes.

14:24 20 **Q.** Do you recognize **Exhibit 39**?

21 **A.** I have seen it, yes.

22 **Q.** Is it part of your personal file on Mr. Zeleny?

23 **A.** Yes.

24 **Q.** Do you recognize it to be a printout of a
14:24 25 portion of Mr. Zeleny's website; true?

1 **A.** Yes.

2 **Q.** Subrah.com. You're aware of that website;
3 right?

4 **A.** I'm not.

14:24 5 **Q.** How did you -- strike that.

6 How did **Exhibit 39** make its way into
7 Mr. Zeleny's file?

8 **A.** I'm not sure.

9 **Q.** Do other people have access to your personal
14:24 10 file on Mr. Zeleny?

11 **A.** No.

12 **Q.** When you looked at your personal file for
13 purposes of producing documents in this case, **Exhibit 39**
14 was in your file; right?

14:24 15 **A.** Yes.

16 **Q.** You just don't know how it got there.

17 **A.** Correct.

18 **Q.** Had you seen it before collecting documents for
19 production in this case?

14:25 20 **A.** I don't have independent recollection, as I sit
21 here today, that I saw it before, but it was in my file,
22 so I assume that I'd seen it before.

23 **Q.** Have you, as part of your work for the City of
24 Menlo Park Police Department, looked at Mr. Zeleny's
14:25 25 website?

1 **A.** I have not.

2 **Q.** Has someone else, to your knowledge, at the
3 City of Menlo Park done that?

4 **A.** Yes.

14:25 5 MR. MASTER: Whoa, whoa, whoa. Time out.
6 Question-answer.

7 THE WITNESS: Got it. Sorry.

8 **Q.** (By Mr. Robinson) Has someone else, within the
9 City of Menlo Park, looked at Mr. Zeleny's website for
14:25 10 job-related purposes?

11 **A.** Yes.

12 **Q.** Who is that person?

13 **A.** There were several detectives that did open
14 source research into Mr. Zeleny while he was conducting
14:25 15 his protests in Menlo Park.

16 **Q.** By "open source research," you mean research of
17 publicly available information; correct?

18 **A.** Yes.

19 **Q.** Did you direct anyone within the City of Menlo
14:26 20 Park to do that type of research?

21 **A.** No.

22 **Q.** To the best of your knowledge, how many
23 detectives have been involved in investigative
24 activities to Mr. Zeleny?

14:26 25 **A.** I would say four to five, four to six.

1 **Q.** What is the purpose of that investigative work?

2 **A.** They were instructed by their -- the detective

3 sergeant at the time to look into Mr. Zeleny's open

4 source and to attempt to determine his -- what his

14:26 5 motivations were to openly carry weapons in the city of

6 Menlo Park, and if there was any public safety issues

7 that we need to be concerned of, including threats;

8 things of that nature.

9 **Q.** To your knowledge, at any point in his

14:27 10 protests, has Mr. Zeleny committed a crime?

11 **A.** Yes.

12 **Q.** What crime did he commit?

13 **A.** He was, one time, prosecuted for possession of

14 a concealed weapon.

14:27 15 **Q.** Other than the prosecution for possession of a

16 concealed weapon, are you aware of any other occasion in

17 which -- in which Mr. Zeleny committed a crime in the

18 course of his protests?

19 **A.** Not that I am aware of.

14:27 20 **Q.** Would the answer to that change if I asked you

21 in your capacity as the person most knowledgeable for

22 Menlo Park? I want to make clear that we've exhausted

23 both your personal knowledge and the City of Menlo

24 Park's knowledge, having designated you as the person

14:27 25 most knowledgeable.

1 So in your individual capacity, are you aware
2 of any crime, other than the incident where Mr. Zeleny
3 was prosecuted for carrying a concealed weapon?

4 **A.** I am not aware of any other crime.

14:28 5 **Q.** And in your capacity as the person most
6 knowledgeable for Menlo Park, are you aware of any crime
7 that Mr. Zeleny committed during his protests, other
8 than the one incident where he was prosecuted for
9 carrying a concealed weapon?

14:28 10 **A.** No.

11 **Q.** Mr. Zeleny was acquitted of carrying a
12 concealed weapon; correct?

13 **A.** Yes.

14 **Q.** Your testimony, I take it, you disagree with
14:28 15 the acquittal?

16 **A.** I neither disagree nor agree.

17 **Q.** So aside from the time that Mr. Zeleny was
18 prosecuted and acquitted, you're not aware of any other
19 crime -- the incident that resulted in Mr. Zeleny being
14:28 20 prosecuted and acquitted is the only crime that you're
21 aware of that he ever committed in the course of his
22 protests.

23 MR. MASTER: Objection. Asked and answered.

24 THE WITNESS: That's the only incident where
14:29 25 probable cause arose to have a criminal Complaint filed.

1 **Q.** (By Mr. Robinson) Does the City of Menlo Park
2 still have detectives conducting open source
3 investigation into Mr. Zeleny?

4 **A.** No.

14:29 5 **Q.** When did that stop?

6 **A.** That stopped after the open carry laws changed
7 and he no longer came to the City of Menlo Park.

8 **Q.** Would have been 2013, approximately?

9 **A.** '14.

14:29 10 **Q.** Is there any other person you can think of who
11 has not committed any crime within the city of Menlo
12 Park that has more than one detective conducting open
13 source investigation?

14 MR. MASTER: Objection. Vague and ambiguous as
14:29 15 to time.

16 **Q.** (By Mr. Robinson) Fair enough. In the time
17 frame that the City of Menlo Park was -- had detectives
18 conducting open source investigation into Mr. Zeleny,
19 was there anyone else who had never been convicted of
14:30 20 any crime for whom the City was conducting that type of
21 research?

22 MR. MASTER: Objection. Vague and ambiguous.
23 Go ahead.

24 THE WITNESS: Yes, but you have to understand
14:30 25 that when I said four to six detectives, that's over the

1 time frame, because detectives rotate in and out of
2 detective division. So it wasn't six people at one time
3 doing -- it was one or two, and then they would rotate
4 in and out, and the same thing.

14:30 5 But the answer to your question is yes. There
6 is other people that open source investigation is being
7 done by numerous detectives.

8 Q. (By Mr. Robinson) How many people?

9 A. I don't know.

14:31 10 MR. ROBINSON: Why don't we go ahead and mark
11 that as Exhibit 40.

12 (Exhibit 40 was marked for identification.)

13 Q. (By Mr. Robinson) For the record, Exhibit 40
14 is one page Bates marked MP214; correct?

14:31 15 A. Yes.

16 Q. Do you recognize Exhibit 40?

17 A. I recognize it as an e-mail.

18 Q. Is it an e-mail that the City of Menlo Park
19 produced in connection with this lawsuit?

14:31 20 A. Yes.

21 Q. It's one of the e-mails you reviewed in
22 reviewing the production?

23 A. Yes.

24 Q. Who is -- is it Jaime Romero?

14:31 25 A. Correct.

1 Q. Who is that?

2 A. He's a sergeant.

3 Q. Within the Menlo Park Police Department?

4 A. Yes.

14:31 5 Q. And who is Timothy Brackett?

6 A. He's a sergeant in the Menlo Park Police
7 Department.

8 Q. This e-mail relates to Mr. Zeleny; correct?

9 A. Yes.

14:32 10 Q. In the -- I guess it's the third e-mail down
11 the chain, so the very bottom e-mail, there's a
12 reference to Mr. Zeleny's mother passing away and, to
13 summarize, that potentially triggering him to conduct
14 more protests.

14:32 15 Do you see what I'm talking about?

16 A. Yes.

17 Q. How did the City of Menlo Park get the
18 information that Mr. Zeleny's mother had passed away?

19 A. From the head of security at NEA.

14:32 20 MR. MASTER: Mr. Zeleny, I'd appreciate it if
21 you could be quiet during the deposition. Thank you.

22 Q. (By Mr. Robinson) Do you know how the head of
23 security of NEA got that information?

24 A. No.

14:32 25 Q. Were you aware that NEA was conducting

1 surveillance on Mr. Zeleny?

2 A. Yes.

3 Q. How did you become aware of that?

4 A. The head of security advised me.

14:33 5 Q. What type of surveillance was NEA conducting on
6 Mr. Zeleny?

7 A. My understanding was it was open source, and
8 that sometimes physical surveillance.

9 Q. To your knowledge, how long did that go on?

14:33 10 A. I don't know.

11 Q. In the 2013 -- let's start at 2012 to 2013.

12 You worked with the City of Menlo Park; correct?

13 A. Correct.

14 Q. How often did you communicate with
14:33 15 representatives of NEA during that time period about
16 Mr. Zeleny?

17 A. Only around the times of his protests.

18 Q. Let's say in the two years, 2012 and 2013,
19 estimate how many times you met with or communicated
14:33 20 with representatives of NEA?

21 A. I'd say maybe four or five times.

22 Q. The bottom e-mail in Exhibit 40 describes a
23 meeting with representatives of NEA.

24 Do you see that?

14:34 25 A. Yes.

1 **Q.** Who attended that meeting?

2 **A.** I did, Chief Bob Johnson, and I believe it was
3 the head of security, Mr. Tresmontan from NEA.

14:34 4 **Q.** In the 2012 to 2013 time frame, were you the
5 primary person in the City of Menlo Park Police
6 Department dealing with Mr. Zeleny's protests?

7 **A.** No. I wasn't the primary person, but I was
8 overseeing the primary people who were, in fact, dealing
9 with it.

14:34 10 **Q.** What was your -- you were commander at this
11 point, apparently; is that correct?

12 **A.** Yes.

13 **Q.** And as a commander, a part of your job was to
14 ensure public safety; right?

14:35 15 **A.** Yes.

16 **Q.** Part of your job was to investigate crime;
17 right?

18 **A.** Not specifically me, but I have -- to direct
19 people to investigate crime, yes.

14:35 20 **Q.** Part of your role was to enforce the state law;
21 right?

22 **A.** Correct.

23 **Q.** What did you talk about during this meeting
24 with NEA?

14:35 25 **A.** Exactly what is in the e-mail; that the concern

1 from NEA was because of the information they had
2 received that, perhaps, he could -- it could trigger
3 Mr. Zeleny to come back to do more protests.

14:35 4 Q. Anything else that you recall discussing,
5 either you saying or NEA saying or anyone else at that
6 meeting saying?

7 A. Just they were reiterating their concerns for
8 the safety of their staff.

14:36 9 Q. At the time of that meeting, was Mr. Zeleny
10 actively engaging in protests?

11 A. I'm not sure if, exactly in 2013, whether or
12 not he was, in fact -- yeah. I don't know for a fact
13 when his last protest was.

14 Q. In the last paragraph of the last e-mail, it
14:36 15 notes that "Zeleny has openly carried firearms in the
16 past to bring attention to his cause."

17 Do you see what I'm referring to?

18 A. Yes.

19 Q. Was that your understanding of Mr. Zeleny's
14:36 20 motivation in carrying unloaded firearms during his
21 protests? Was that consistent with your understanding
22 of why Mr. Zeleny was carrying the unloaded firearms; to
23 bring attention to his cause?

24 A. I suppose.

14:36 25 MR. MASTER: Well, don't suppose. Hold on.

1 Time out.

2 He's entitled -- if you have an answer and you
3 know the answer, he's entitled to it. If you don't know
4 the answer, then --

14:36 5 THE WITNESS: Right. I don't know -- I can't
6 speculate as to what Mr. Zeleny's issues in his head
7 are. I don't know what it is that is causing him to do
8 this. I don't know.

9 Q. (By Mr. Robinson) Did you have any opinion, as
14:37 10 a police commander at the City of Menlo Park, about why
11 Mr. Zeleny might be doing it?

12 A. My opinion was that he had some kind of issue
13 with NEA.

14 Q. Referring specifically to carrying the unloaded
14:37 15 firearms, did you have an understanding, either based on
16 discussion with your officers or discussion with
17 Mr. Zeleny, or review of his online materials, about why
18 he was carrying the unloaded firearms during his
19 protests?

14:37 20 A. Mr. Zeleny actually spoke to that in his
21 hearing in front of the City Council that he did -- he
22 said that he did it to bring attention to himself.

23 Q. Let's take another look at Exhibit 39, if we
24 could. Actually, before I get into 39, are you aware of
14:38 25 any other instances in your work with the City of Menlo

1 Park Police Department where a private entity was
2 conducting open source investigation into someone that
3 was shared with the City of Menlo Park?

4 **A.** Yes.

14:38 5 **Q.** How many occasions has that occurred, if you
6 can estimate?

7 **A.** Probably 30 or 40.

8 **Q.** Turning to **Exhibit 39**, Mr. Zeleny's website
9 describes a number of allegations against Min Zhu; is
14:39 10 that a fair description of what it says?

11 **A.** To be perfectly honest with you, Counselor, I
12 did not read this. So I could see what it says right
13 there, so I would assume -- sorry. I'm not assuming --
14 that what is -- it is alleging this person did these
14:39 15 things.

16 **Q.** Based on your familiarity with Mr. Zeleny's
17 protests, regardless of -- let's leave aside the website
18 for a second. Based on your understanding of
19 Mr. Zeleny's protests, what was the nature of the issue
14:39 20 that he was protesting about?

21 MR. MASTER: Objection. Lacks foundation.
22 Calls for speculation.

23 You can answer if you know.

24 THE WITNESS: I have never researched, nor read
14:39 25 into, nor looked into the reasons why Mr. Zeleny has a

1 problem with NEA besides the fact of what I've seen,
2 obviously, in his protests about this person and some
3 allegation of a sexual misconduct with his daughter.
4 That's the extent of what I know about his reasoning
14:40 5 into these protests.

6 Q. (By Mr. Robinson) You understand that the
7 protests involve an allegation of child rape or child
8 molestation; correct?

9 A. That is what is alleged, yes.

14:40 10 Q. And you understand that the protests involve
11 some connection between NEA and the individual who
12 committed the alleged child rape or child molestation;
13 correct?

14 A. Apparently, that's what the issue is, yes.

14:40 15 Q. Well, you read Mr. Zeleny's permit application;
16 right?

17 A. Yes.

18 Q. And you've been copied on a number of e-mails
19 where Mr. Zeleny goes back and forth with City officials
14:40 20 about the nature of his protests; correct?

21 A. Yes.

22 Q. And officers have gone out and talked to
23 Mr. Zeleny from time to time during his protests;
24 correct?

14:40 25 A. Yes.

1 **Q.** And there are signs in the protests that
2 include some description of what Mr. Zeleny's protesting
3 about.

4 **A.** Yes.

14:40 5 **Q.** Based on that body of information, you're aware
6 that Mr. Zeleny has accused the individual in that
7 picture, Min Zhu, of raping his daughter; right?

8 **A.** Apparently.

9 **Q.** Have you done anything to investigate whether
14:41 10 the allegation is true?

11 **A.** Nothing.

12 **Q.** Have you done anything to investigate whether
13 NEA has supported the individual who's accused of raping
14 his daughter?

14:41 15 **A.** No.

16 **Q.** Do you consider it part of your duties as a
17 chief of police of Menlo Park to investigate crimes like
18 child rape?

19 **A.** If we had a victim, yes.

14:41 20 **Q.** In this case, you don't have a victim?

21 **A.** We have no -- I have not received, nor has the
22 Police Department received, any criminal Complaint,
23 allegation of anything of that nature involving these
24 people.

14:42 25 **Q.** Do you recall receiving e-mails where

1 Mr. Zeleny summarized and provided websites or other
2 information to access records reflecting the substance
3 of the allegations of child rape?

4 **A.** No.

14:42 5 **Q.** Other than not receiving any criminal Complaint
6 of any kind, is there any other reason that the City of
7 Menlo Park -- well, let me broaden it a little bit.

8 Do you know whether the City of Menlo Park has
9 ever investigated the allegations of child rape?

14:42 10 MR. MASTER: Against?

11 MR. ROBINSON: Against Min Zhu.

12 THE WITNESS: No.

13 **Q.** (By Mr. Robinson) I'm sorry. You don't know
14 whether it has or it has not?

14:42 15 **A.** It has not.

16 **Q.** Is there any reason that the City of Menlo Park
17 has never investigated those allegations, other than the
18 lack of a criminal Complaint?

19 **A.** In order to investigate a crime, we have to
14:43 20 have someone report it to us, we have to have a victim,
21 and we have to determine jurisdiction.

22 **Q.** Which of those are reasons why the City of
23 Menlo Park hasn't investigated the allegations of child
24 rape?

14:43 25 **A.** All of them.

1 **Q.** When you say you don't have a victim, what do
2 you mean?

3 **A.** In order to prosecute a rape, we have to have a
4 victim, the victim of that rape, and be able to speak to
14:43 5 the victim of that rape.

6 **Q.** So when you say you don't have a victim, do you
7 mean that you don't have a victim who's come forward to
8 speak with you?

9 **A.** Correct.

14:44 10 **Q.** If the allegations are true, there is, in fact,
11 a victim; right? There's someone who was raped, so the
12 lack of a victim just means a person hasn't come
13 forward; correct?

14 MR. MASTER: Objection. Compound.
14:44 15 Argumentative.

16 **Q.** (By Mr. Robinson) I mean, is it the position
17 of the City of Menlo Park that there was no victim in
18 this case?

19 MR. MASTER: Objection. Lacks foundation.
14:44 20 Calls for speculation.

21 Go ahead.

22 THE WITNESS: How can we -- Counselor, how can
23 we investigate a crime if we have no victim and no
24 information coming forward besides, you know, what
14:44 25 Mr. Zeleny is alleging? We have to have a victim.

1 There is a process in order to do criminal
2 investigations. Part of that is having credible
3 information from the victim that a crime occurred.

4 Unless we have that, we cannot initiate a -- an
14:44 5 investigation based on unsubstantiated rumors or e-mails
6 that are sent by random people.

7 **Q.** (By Mr. Robinson) My question was directed to
8 what you mean when you say "We don't have a victim."

9 What do you mean by "We don't have a victim"?

14:45 10 MR. MASTER: Objection. Asked and answered.

11 THE WITNESS: The victim has not come forward
12 to make a criminal Complaint about being raped.

13 **Q.** (By Mr. Robinson) Have you done anything --
14 has the City of Menlo Park done anything to look into
14:45 15 the materials that Mr. Zeleny submitted via e-mail or in
16 connection with his permit applications corroborating
17 the allegations?

18 **A.** No.

19 **Q.** Is there any reason why the City hasn't looked
14:45 20 into that information?

21 MR. MASTER: Objection. Asked and answered.

22 You want to answer it again?

23 THE WITNESS: I'd rather not.

24 MR. MASTER: Well, do it one more time.

14:45 25 THE WITNESS: Because we continue -- as I said,

1 in order to investigate a crime, we have to have a
2 complaining victim, someone to come forward and tell us
3 that they were a victim of a crime, and then we would,
4 in fact, do that. At this point, this alleged victim
14:46 5 has not come forward, has not made any police reports
6 that I know of anywhere, and definitely not at Menlo
7 Park PD.

8 MR. ROBINSON: Why don't we mark this as
9 Exhibit 41.

14:46 10 (Exhibit 41 was marked for identification.)

11 Q. (By Mr. Robinson) For the record, Exhibit 41
12 is one page, MP261; correct?

13 A. Yes.

14 Q. Do you recognize it?

14:47 15 A. I do.

16 Q. Is it an e-mail from you to a representative of
17 NEA?

18 A. Yes.

19 Q. Could you just pronounce the gentleman's name.

14:47 20 A. It's Dave Tresmontan, T-r-e-s-m-o-n-t-a-n.

21 Q. In Mr. Tresmontan's e-mail, he's asking you
22 about your -- at the bottom of the page, he's asking you
23 about your availability for a meeting regarding Zeleny.

24 Do you see that?

14:47 25 A. Yes.

1 **Q.** Do you recall a discussion about setting up a
2 meeting in the July 2015 time frame about Mr. Zeleny?

3 **A.** Yes.

14:47 4 **Q.** What was the context of that meeting? Why were
5 you setting it up?

6 **A.** This was a meeting that included numerous
7 stakeholders dealing with Mr. Zeleny in case he were to
8 resume his armed protests and included numerous
9 government and non-government stakeholders.

14:48 10 **Q.** NEA was among the non-government stakeholders?

11 **A.** Yes.

12 **Q.** In your experience with the City of Menlo Park,
13 how many times have you met with a group of government
14 and non-government stakeholders about an issue related
14:48 15 to your work as a police officer?

16 **A.** Numerous.

17 **Q.** What types of issues do you generally meet with
18 with non-government stakeholders?

19 **A.** It could -- it varies anywhere from
14:48 20 homelessness to issues with traffic around certain
21 locations. It runs the gamut of different concerns that
22 people have where we would meet with government and
23 non-government officials.

24 **Q.** Have you ever met with government and
14:48 25 non-government officials about a protest, other than

1 Mr. Zeleny's protests?

2 A. Several.

3 Q. In your e-mail reply on Exhibit 41, you ask

4 whether NEA still has investigators checking open

14:49 5 sources on Zeleny.

6 A. That's correct.

7 Q. What was the response?

8 A. I don't believe he responded. He didn't

9 respond.

14:49 10 Q. At any point after this e-mail, did you get any

11 information from NEA or its representatives about

12 Mr. Zeleny's movements?

13 A. I believe, during the meeting that you spoke

14 of, that Mr. Tresmontan did, in fact, give some

14:49 15 information about, you know, his -- his whereabouts.

16 Q. His whereabouts, meaning Mr. Zeleny's

17 whereabouts?

18 A. Correct.

19 Q. And that was information that NEA apparently

14:50 20 obtained through its investigation?

21 A. I don't know how they obtained it.

22 Q. Aside from information about Mr. Zeleny's

23 whereabouts, what other information did you receive from

24 NEA's investigative efforts at any point in its

14:50 25 investigation of Mr. Zeleny?

1 **A.** We received open source information from,
2 apparently, websites that he was either active on or
3 authoring. That's about it.

14:50 4 **Q.** How frequently did you receive information from
5 NEA about either Mr. Zeleny's whereabouts or his online
6 activity?

7 **A.** Only around the time of his protests.

8 MR. ROBINSON: Why don't we mark this as
9 **Exhibit 42.**

14:52 10 (**Exhibit 42** was marked for identification.)

11 **Q.** (By Mr. Robinson) For the record, **Exhibit 42**
12 is multiple pages, MP55 through MP58; correct?

13 **A.** Correct.

14 **Q.** Do you recognize **Exhibit 42**?

14:52 15 **A.** I do.

16 **Q.** What is it?

17 **A.** It is an e-mail with a daily police log
18 attached.

19 **Q.** Is this the type of document that would
14:52 20 ordinarily be circulated in the Menlo Park Police
21 Department?

22 **A.** On a daily basis.

23 **Q.** Is it sent to all police department staff?

24 **A.** Yes.

14:52 25 **Q.** Were you employed with the Menlo Park Police

1 Department on October 22nd, 2011?

2 **A.** I believe I started on at the 20th, so yes.

3 **Q.** Okay.

4 If you could turn to Page 2, so the page that's

14:53 5 marked MP56. And there's a line under "training

6 other" -- you're at the right place.

7 That says "Zeleny/point of view-arrests for

8 recording police activity."

9 Do you see that?

14:53 10 **A.** Yes.

11 **Q.** What is the reference to "Zeleny/point of

12 view"?

13 **A.** That is -- you're conflating the two. It's

14 training and then other. The point of view is a

14:53 15 training bulletin that gets sent every month, and this

16 training bulletin, obviously, was about arrests for

17 recording police activity. Zeleny was a separate issue.

18 **Q.** Was Zeleny in the other category or the

19 training category?

14:53 20 **A.** The way we use this is not a hundred percent

21 formal, so it could have been either.

22 **Q.** Do you know what the -- what the reference to

23 Zeleny in that section refers to?

24 **A.** No. I had only been there a day. No.

14:54 25 **Q.** Has the City of Menlo Park Police Department

1 ever had any formal meetings relating to Mr. Zeleny?

2 MR. MASTER: Objection. Vague and ambiguous.

3 You can answer.

4 THE WITNESS: Yes.

14:54 5 Q. (By Mr. Robinson) How many? Let's say in your
6 time with the City of Menlo Park Police Department, how
7 many times has the police department met regarding
8 Mr. Zeleny?

9 A. The entire police department?

14:54 10 Q. Sure.

11 A. None.

12 Q. Has -- how many times has Mr. Zeleny been
13 raised at meetings of the entire department?

14 A. Zero.

14:54 15 Q. Have there been meetings of less than the
16 entire department relating to Mr. Zeleny?

17 A. Where he has been mentioned?

18 Q. Sure.

19 A. Yes.

14:54 20 Q. On approximately how many occasions?

21 A. Probably upwards of 20 times.

22 Q. Have there been any meetings specifically to
23 discuss Mr. Zeleny and his protests?

24 A. With the entire police department?

14:55 25 Q. No. With any subset of the police department.

1 **A.** Yes.

2 **Q.** Approximately how many meetings, during your
3 time with the City of Menlo Park Police Department, have
4 there been specifically to address Mr. Zeleny or his
14:55 5 protests?

6 **A.** Probably upwards of ten.

7 **Q.** What was the general nature of those meetings?
8 What -- go ahead.

9 **A.** Sorry. Our response.

14:55 10 **Q.** Your response to Mr. Zeleny's protests?

11 **A.** Yes.

12 **Q.** Any other reasons why meetings were called
13 regarding Mr. Zeleny?

14 **A.** No.

14:56 15 **Q.** Why don't I hand you what we'll mark as Exhibit
16 43.

17 (Exhibit 43 was marked for identification.)

18 **Q.** (By Mr. Robinson) For the record, Exhibit 43
19 is multiple pages, and the top left-hand corner of the
14:56 20 first page is "Policy 467." To the right of that,
21 "Menlo Park Police Department Policy Manual"; correct?

22 **A.** Yes.

23 **Q.** Do you recognize Exhibit 43?

24 **A.** I do.

14:57 25 **Q.** Is it part of the City of Menlo Park Police

1 Department Policy Manual?

2 A. It is.

3 Q. It's a policy that relates to First Amendment
4 assemblies; true?

14:57 5 A. Yes.

6 Q. This would be the policy that governs how the
7 City is supposed to deal with protests?

8 A. Correct.

9 Q. Going down to 467.3, "General Considerations."
14:57 10 Do you see where I'm referring to?

11 A. Yes.

12 Q. There's a reference to individuals congregating
13 in streets or walkways.

14 Do you see that?

14:57 15 A. Yes.

16 Q. And the policy appears to recognize that
17 individuals have the right to congregate on public
18 rights-of-way such as streets and walkways; correct?

19 A. Limited, but yes.

14:57 20 Q. What limitations are there, in your view, on
21 the right of protestors to congregate on public
22 walkways?

23 A. Limited by laws --

24 (Reporter interruption.)

14:58 25 THE WITNESS: Limited by laws or ordinances

1 regulating such matters as the obstruction of individual
2 or vehicle access or egress, trespass, noise, picketing,
3 distribution of handbills and leaflets, and loitering.

14:58 4 Q. (By Mr. Robinson) What are the Menlo Park
5 laws, regulations, or ordinances that govern protestors
6 assembling on public sidewalks?

7 MR. MASTER: Objection. Lacks foundation.
8 Calls for speculation.

9 If you know, you can answer.

14:58 10 THE WITNESS: As long as they are peaceably
11 assembling and they are following laws and ordinances
12 and not blocking a sidewalk, egress, or entrance, then
13 they are allowed to peaceably assemble.

14 Q. (By Mr. Robinson) If a group of people
14:59 15 assembled on a sidewalk and pedestrians could still walk
16 by but there was a group assembled, would that violate
17 any rule or regulation of the City of Menlo Park?

18 MR. MASTER: Objection. Lacks foundation.
19 Calls for speculation. Incomplete hypothetical. Calls
14:59 20 for a legal conclusion.

21 THE WITNESS: It would depend on their other
22 behavior, but if they were not blocking, they would not
23 be blocking.

24 Q. (By Mr. Robinson) Would they be allowed to
14:59 25 assemble in protest if they left a path for pedestrians

1 to pass by?

2 MR. MASTER: Same objection. Asked and
3 answered.

4 THE WITNESS: As long as they did not violate
14:59 5 any of the other ordinances and/or laws.

6 Q. (By Mr. Robinson) Would protesters be allowed
7 to assemble and demonstrate on the street in the city of
8 Menlo Park?

9 MR. MASTER: Objection. Vague. Ambiguous.
15:00 10 Overbroad. Lacks foundation. Incomplete hypothetical.
11 Calls for legal conclusion.

12 If you can answer, go ahead.

13 THE WITNESS: The answer would be no, if they
14 were blocking traffic.

15:00 15 Q. (By Mr. Robinson) Is there any area of the
16 street of Menlo Park where protestors are allowed to
17 demonstrate on the street?

18 MR. MASTER: Same objections.

19 THE WITNESS: We don't have a -- a protest map
15:00 20 as a side. So the answer is no. We don't have that
21 ability to say, "You may protest on this street but not
22 on that street."

23 Q. (By Mr. Robinson) So protestors are not
24 allowed to protest on the street anywhere in the city of
15:00 25 Menlo Park; is that accurate?

1 **A.** That's not accurate.

2 **Q.** Where are they allowed to protest on the
3 street?

4 **A.** As long as they are not interfering with
15:00 5 egress, vehicle access, et cetera.

6 **Q.** In your experience with the police department
7 of the City of Menlo Park, has there ever been an
8 occasion where protestors protested on the street and
9 were allowed to remain assembled and protesting on the
15:01 10 actual street?

11 **A.** Yes.

12 **Q.** What was that occasion?

13 **A.** There -- well, it was -- they transited a
14 street; they didn't remain on the street. And that was
15:01 15 an antigun protest from the Menlo Atherton High School
16 where students walked from the school to a location.

17 **Q.** So they didn't stay on the street?

18 **A.** Correct.

19 **Q.** They were allowed to pass over a street to get
15:01 20 from one location to another?

21 **A.** They transited through the street, yes.

22 **Q.** Other than that occasion, are you familiar with
23 any other occasion where protestors were allowed to
24 access and assemble on the street?

15:01 25 **A.** Not that I'm aware of.

1 **Q.** Can Mr. Zeleny protest on the street in the
2 city of Menlo Park?

3 MR. MASTER: Objection. Vague. Ambiguous.
4 Overbroad. Incomplete hypothetical. Calls for legal
15:02 5 conclusion. Speculation.

6 You can answer.

7 THE WITNESS: It would depend on what type of
8 protest and if he was following all the laws and whether
9 he was blocking vehicle access or not.

15:02 10 **Q.** (By Mr. Robinson) Is there any written policy
11 or procedure or ordinance of the City of Menlo Park that
12 relates to protesting on the street?

13 **A.** I think we're discussing one right now, Policy
14 467.

15:02 15 **Q.** Aside from the police department manual, is
16 there any other policy, procedure, ordinance, rule,
17 regulation, or authority within the City of Menlo Park
18 regarding protesting on the street?

19 **A.** The Vehicle Code.

15:03 20 **Q.** What -- what Vehicle Code -- I'm not going to
21 ask you the section numbers, but what are the Vehicle
22 Code regulations, in general, that govern protesting on
23 the street?

24 **A.** The Vehicle Code regulates when a pedestrian
15:03 25 can be in the street.

1 **Q.** How does that apply -- go ahead.

2 **A.** And when they cannot be in the street.

3 **Q.** How does that apply to protests?

4 **A.** If a protestor was in the street illegally,

15:03 5 they would be breaking the law. That would be a Vehicle
6 Code violation.

7 **Q.** I assume that a group of protestors walking
8 down the street, other than in a crosswalk, would
9 violate the Vehicle Code; right?

15:03 10 **A.** Yes.

11 **Q.** The group of antigun protestors from the high
12 school walked down the street; right?

13 **A.** Correct.

14 **Q.** They violated the Vehicle Code; right?

15:03 15 **A.** Yes.

16 **Q.** They were allowed to do that.

17 **A.** Yes.

18 **Q.** You're familiar with the area Mr. Zeleny
19 protested in the past; right?

15:04 20 **A.** Yes.

21 **Q.** Sidewalk outside of the Rosewood Complex on
22 Sand Hill Road?

23 **A.** Yes.

24 **Q.** Is Mr. Zeleny allowed to protest on that area
15:04 25 of the sidewalk?

1 **A.** As long as he lawfully does so, yes.

2 **Q.** Is -- let's -- we'll save that for later.

3 Let's go to Page 2 of Policy 467. And I'm
4 going to ask you about Paragraph 2 of 467.3.1.

15:05 5 Does the second photograph of 467.3.1 reflect
6 the policy of the City of Menlo Park Police Department
7 relating to maintenance of photographs and video
8 recordings?

9 **A.** Yes.

15:05 10 **Q.** The substance of the policy is that you aren't
11 to maintain photographs or video recordings unless it
12 relates directly to investigation of a crime and there's
13 reasonable suspicion of criminal activity; true?

14 **A.** Correct.

15:05 15 **Q.** And the City's policy, at least, is that you
16 won't maintain photographs or videos simply to maintain
17 information about the views or activities of any
18 individual, group, association, et cetera; correct?

19 **A.** That's not exactly what it says.

15:06 20 **Q.** How is that inaccurate?

21 MR. MASTER: Document speaks for itself. Do
22 you want him to read the document?

23 MR. ROBINSON: No. I'd like him to answer my
24 question.

15:06 25 **Q.** (By Mr. Robinson) How is that inaccurate?

1 **A.** I was going to read the document.

2 **Q.** Go ahead and read it.

3 **A.** "Photographs and videos will not be used or

4 retained for the sole purpose of collecting or

15:06 5 maintaining information about the political, religious,

6 or social views of associations or the activities of any

7 individual, group, association, organization,

8 corporation, business, or partnership unless such

9 information directly relates to an investigation of

15:06 10 criminal activities and there is reasonable suspicion

11 that the subject of the information is involved in

12 criminal conduct."

13 **Q.** Is the City currently investigating Mr. Zeleny

14 for criminal activity?

15:07 15 **A.** Not currently investigating him, no.

16 **Q.** Other than the concealed carry issue for which

17 Mr. Zeleny was acquitted, did the City ever investigate

18 Mr. Zeleny for criminal activity?

19 **A.** No.

15:07 20 **Q.** Other than that issue related to the concealed

21 carry for which Mr. Zeleny was acquitted, did the City

22 ever have a reasonable suspicion that he was engaged in

23 criminal conduct?

24 **A.** No.

15:07 25 **Q.** Does maintaining a file on Mr. Zeleny, despite

1 the absence of an investigation or any reasonable
2 suspicion of criminal conduct violate the City's written
3 policy related to First Amendment activities?

4 **A.** No.

15:08 5 **Q.** Why not?

6 **A.** Because he -- the issue of Mr. Zeleny openly
7 carrying weapons, as a public safety concern, and the
8 fact that there was concerns on our part and reasonable
9 suspicion that he may come back and attempt to protest

15:08 10 with openly carried weapons, which are now illegal.

11 **Q.** What was that reasonable suspicion based on?

12 **A.** Based on the information that Mr. Zeleny
13 himself provided to us.

14 **Q.** What about the information that Mr. Zeleny

15:08 15 provided suggested to you that he would violate the law
16 and openly carry firearms without a permit?

17 **A.** Based on the information that he provided in
18 which he said he had every right to designate himself as
19 a person who was able to do a entertainment event and
15:09 20 carry weapons. He said so during the open meeting with
21 the City Council, where he told them if he wished, he
22 could have been armed at that time.

23 **Q.** So based on Mr. Zeleny's assertion that he had
24 the right to openly carry firearms, you believe that

15:09 25 supported a reasonable suspicion on the part of the

1 police department to believe that Mr. Zeleny might
2 engage in criminal activity?

3 A. Yes.

15:09 4 Q. Mr. Zeleny filed his permit application in
5 2015; correct?

6 A. Correct.

7 Q. And he was prosecuted from 2012 to 2014;
8 correct?

9 A. Prosecuted?

15:09 10 Q. For the concealed carry issue for which he was
11 acquitted?

12 A. I don't remember the exact time frame when he
13 was prosecuted.

14 Q. You were the officer in charge of recommending
15:10 15 that for prosecution; right?

16 A. That's incorrect.

17 Q. Who was the individual, on behalf of the police
18 department, responsible for referring the concealed
19 carry issue for prosecution?

15:10 20 A. I believe the investigating officer was Officer
21 Foy.

22 MR. ROBINSON: It looks like we have about ten
23 minutes left, so why don't we take a quick break.

24 THE VIDEOGRAPHER: This now marks the end of
15:10 25 Disk labeled No. 2 in the videotaped deposition of Chief

1 Dave Bertini. We are now going off the record. The
2 time is 3:10 p.m.

3 (Recess taken from 3:10 p.m. to 3:23 p.m.)

4 THE VIDEOGRAPHER: This now begins the
15:24 5 beginning of disk labeled No. 3 in the videotaped
6 deposition of Chief Dave Bertini. We are now going back
7 on the record. The time is 3:23 p.m.

8 (Exhibits 44 and 45 were marked for
9 identification.)

15:25 10 Q. (By Mr. Robinson) I'm going to start with a
11 few questions about 45 and then work backwards to 44.

12 Exhibit 45 is a three-page document, Bates
13 marked MP226 through 228; correct?

14 A. Correct.

15:25 15 Q. The top e-mail in this e-mail thread is one
16 from you to David Trestman -- I'm sorry. Pronounce it
17 again.

18 A. Tresmontan.

19 Q. Tresmontan?

15:25 20 A. Tresmontan.

21 Q. Got it.

22 -- Mr. Tresmontan at NEA; correct?

23 A. The top e-mail is my reply to him, yes.

24 Q. So he e-mailed you, and then you e-mailed him
15:25 25 back.

1 **A.** Correct.

2 **Q.** In your e-mail to him, there is the statement
3 at the end of the paragraph there, "I was the person who
4 made the decision to send the case over for
15:26 5 prosecution."

6 Do you see that?

7 **A.** Yes.

8 **Q.** Does that refresh your recollection that you
9 were the person who made the decision to send

15:26 10 Mr. Zeleny's case for prosecution?

11 **A.** Ultimately, I have to sign off on all cases.

12 **Q.** You signed off on Mr. Zeleny's case; correct?

13 **A.** Correct.

14 **Q.** Officer Foy wasn't permitted to refer

15:26 15 Mr. Zeleny's case for prosecution on his own, was he?

16 **A.** It has to go through levels of the police
17 department. It goes through a sergeant, and then it
18 goes through the commander before it gets sent off to
19 the D.A.'s Office.

15:26 20 **Q.** You were the commander responsible for

21 Mr. Zeleny's case; true?

22 **A.** Correct.

23 **Q.** So you were the person who made the ultimate
24 decision about whether to send it for prosecution; true?

15:26 25 **A.** Correct. I signed off on it.

1 **Q.** And in your e-mail, you are advising a
2 representative of NEA that you were the person who made
3 that decision; true?

4 **A.** Yes.

15:27 5 **Q.** Did you testify in Mr. Zeleny's criminal case?

6 **A.** I did.

7 **Q.** Was your testimony, in part, that Mr. Zeleny
8 had a concealed firearm?

9 **A.** The record would speak for itself. I don't
15:27 10 remember exactly what I said in that hearing.

11 **Q.** Did you ever observe the holster that was at
12 issue in Mr. Zeleny's criminal prosecution?

13 **A.** In photographs.

14 **Q.** Did you have a view about whether carrying a
15:27 15 weapon in that holster would be a concealed carry?

16 **A.** In that configuration, yes.

17 **Q.** Why don't we take a look at **Exhibit 44**. For
18 the record, it's MP41 and it's one page; correct?

19 **A.** Yes.

15:27 20 **Q.** This is an e-mail exchange between two
21 representatives of the City of Menlo Park; correct?

22 **A.** Yes.

23 **Q.** And is Brian Roberts an individual at the
24 police department?

15:28 25 **A.** He was the -- this occurred about six months --

1 seven, eight months before I was hired by the Menlo Park
2 Police Department, but I know that Brian Roberts was the
3 chief of police at the time.

4 Q. And in Mr. Romero's e-mail to Mr. Roberts, he
15:28 5 references Mr. Zeleny and says he likes to engage in
6 conversations and --

7 (Reporter interruption.)

8 Q. (By Mr. Robinson) -- manipulate as much as
9 possible, satisfying his need for attention.

15:28 10 Do you see where I'm referring to?

11 A. Yes.

12 Q. Do you share the view that Mr. Zeleny likes to
13 engage in conversations and manipulate as much as
14 possible?

15:28 15 A. I'm not -- I don't know of any conversations
16 Mr. Zeleny has. As far as his manipulation, yes, it is
17 my opinion that he's manipulating the Penal Code to
18 attempt to be able to legally protest while armed.

19 Q. In what way is he manipulating the Penal Code,
15:29 20 in your view?

21 A. Although he has asserted that he has a right to
22 designate himself as an active participant in an event
23 and -- and carry weapons during his protests, he is
24 attempting to go through the City's process to get these
15:29 25 permits in order to do that. And that is what we are

1 attempting to come to a conclusion with as far as his
2 second permit.

3 Q. Part of your answer related to Mr. Zeleny
4 asserting that he has the right to engage in the
15:30 5 protests without -- or to engage in an entertainment
6 event or to film his protests as part of a video
7 production without the City's authorization; is that
8 accurate?

9 A. That is my understanding of what he has alleged
15:30 10 or he has said.

11 Q. As the person most qualified on behalf of the
12 City of Menlo Park, is he correct in that assertion?

13 A. In the assertion -- no; that he can't -- hold
14 on.

15:30 15 Go back and tell me the assertion again.

16 Q. Sure. Is it accurate that Mr. Zeleny can
17 engage in his activities with unloaded firearms without
18 some kind of permit from the City?

19 A. That is not correct.

15:30 20 Q. Okay.

21 So you disagree with his assertion?

22 A. That's correct.

23 Q. And assuming that he did that, we've talked
24 about this before, and I don't want to belabor it.

15:30 25 Assuming that he did that, he would be subject to

1 prosecution?

2 **A.** He may be subject to arrest and prosecution.

3 **Q.** And if I understood you correctly, Mr. Zeleny
4 is manipulating the process by applying for the permits;
15:31 5 is that correct?

6 **A.** Yes.

7 **Q.** Okay.

8 So the City disagrees with him -- strike that.

9 In the City's view, Mr. Zeleny needs the

15:31 10 permits in order to use the guns in the protests -- in
11 the entertainment event, the protests, the video,
12 whatever it is, he needs a permit; correct?

13 **A.** In order for the exception to be applicable, he
14 has to be involved in a permitted activity, yes.

15:31 15 **Q.** And in your view, Mr. Zeleny is manipulating
16 the process by applying for the permits he needs to
17 engage in that activity?

18 **A.** Based on his own words, yes.

19 **Q.** Going on to the next paragraph in **Exhibit 44**,
15:32 20 there is a reference to continuing to be in close
21 contact with security from NEA.

22 Do you see that?

23 **A.** I do.

24 **Q.** Do you have an understanding of how -- for what
15:32 25 period of time the City of Menlo Park was in contact

1 with security from NEA regarding Mr. Zeleny?

2 A. Not before I became an employee there.

3 Q. Throughout the entire period of time that you

4 were an employee, has the City been in close contact

15:32 5 with security from NEA?

6 A. I would not characterize it as close contact.

7 Q. How would you characterize it?

8 A. I would characterize it as contact when

9 warranted, when Mr. Zeleny was coming to do a protest.

15:33 10 MR. ROBINSON: Why don't we go ahead and mark
11 this as the next in order, please.

12 (Exhibit 46 was marked for identification.)

13 Q. (By Mr. Robinson) For the record, Exhibit 46

14 is a four-page document, MP1895 through 1898; correct?

15:33 15 A. Correct.

16 Q. Do you recognize it, Exhibit 45?

17 A. I recognize it as a police report from the

18 Menlo Park Police Department.

19 Q. Is this one of the documents that was collected

15:34 20 and produced in this litigation?

21 A. Yes.

22 (Reporter interruption.)

23 Q. (By Mr. Robinson) I'm sorry.

24 Exhibit 46 is a Menlo Park Police report;

15:34 25 correct?

1 **A.** Yes.

2 **Q.** And **Exhibit 46** is one of the documents that was
3 collected and produced by the City of Menlo Park in this
4 lawsuit.

15:34 5 **A.** Yes.

6 **Q.** This police report relates to Mr. Zeleny's
7 protests; correct?

8 **A.** One of them.

9 **Q.** And is it your understanding that this was a
15:34 10 protest that involved Mr. Zeleny carrying unloaded
11 firearms?

12 **A.** Based on what I read in the report, yes. But
13 this, again, occurred two -- a year before I was
14 employed there.

15:34 15 **Q.** If you go under the narrative section on 1897,
16 the second paragraph discusses signs being placed for
17 Mr. Zeleny's protest.

18 Do you see that?

19 **A.** Yes.

15:35 20 **Q.** It would appear, based on the police report,
21 that Mr. Zeleny cooperated with police officers'
22 requests to rearrange the signs; true?

23 **A.** Yes.

24 **Q.** If you go down to the second paragraph -- third
15:35 25 paragraph from the bottom, there is a discussion of

1 Mr. Zeleny having a firearm and being compliant with a
2 request to check whether it was loaded; correct?

3 A. Yes, a 12-gauge shotgun.

4 Q. Based on that paragraph, Mr. Zeleny was also
15:35 5 cooperative with officers' requests to inspect his
6 weapon; true?

7 A. Based on the report, yes.

8 Q. In any of your experience with Mr. Zeleny, has
9 he been anything other than cooperative with officers'
15:36 10 requests to inspect his firearms?

11 A. No.

12 Q. Has he been uncooperative with officers in any
13 way, to your knowledge?

14 A. Not to my knowledge.

15:36 15 Q. Going down to the next paragraph, second up
16 from the bottom, is a reference to a bagpiper.

17 And my question is: It appears, based on the
18 report, that Mr. Zeleny cooperated with the officers'
19 request to relocate the bagpiper so that the noise was
15:36 20 at an acceptable level; correct?

21 A. Yes.

22 Q. And in the next paragraph, Mr. Zeleny
23 cooperated with a request to have a trumpet player play
24 music at an acceptable level; true?

15:36 25 A. Yes.

1 MR. ROBINSON: Let's go on to Exhibit 47.

2 (Exhibit 47 was marked for identification.)

3 Q. (By Mr. Robinson) For the record, Exhibit 47
4 is three pages, MP1871 through 1873; correct?

15:37 5 A. Correct.

6 Q. Do you recognize Exhibit 47?

7 A. It's a Menlo Park Police report.

8 Q. It is one of the documents collected and
9 produced in this lawsuit by the City of Menlo Park;

15:37 10 true?

11 A. Yes.

12 Q. And in the narrative section of this police
13 report, it discusses an inspection of one of
14 Mr. Zeleny's firearms; correct?

15:38 15 A. Again, this was a year before I was employed
16 with the Menlo Park Police Department, but yes, it does.

17 Q. And in this report, the officer notes that
18 Mr. Zeleny voluntarily offered to allow the officer to
19 inspect his firearm; correct?

15:38 20 A. Yes, a shotgun.

21 Q. And the officer apparently thanked Mr. Zeleny
22 for his cooperation.

23 A. According to the police report, he did.

24 Q. Is that consistent with your understanding of
15:38 25 Mr. Zeleny's behavior throughout his protests; that he

1 was cooperative with the requests made by police
2 officers?

3 A. Yes.

4 Q. His cooperation included the location of
15:39 5 various parts of his protest; right?

6 A. In the one case that I read, yes.

7 Q. And it also included cooperation regarding
8 inspection of his firearms; true?

9 A. Yes.

15:39 10 MR. ROBINSON: Let's mark this as 48, please.
11 (Exhibit 48 was marked for identification.)

12 Q. (By Mr. Robinson) For the record, Exhibit 48
13 is multiple pages, MP61 through 65; correct?

14 A. Yes.

15:40 15 Q. Do you recognize Exhibit 48?

16 A. It is an e-mail with a daily police log
17 attached.

18 Q. And this is an e-mail that you would have
19 received in your capacity as -- strike that.

15:40 20 In February of 2012, what was your title with
21 the Menlo Park Police Department?

22 A. Patrol commander.

23 Q. Okay.

24 Did you receive this e-mail and attachment in
15:40 25 that capacity on the date listed here?

1 **A.** Yes.

2 **Q.** Could you please take a look at
3 problem-solving.

4 **A.** Okay.

15:41 5 **Q.** This problem-solving item relates to another
6 day of Mr. Zeleny's protests outside of NEA's offices;
7 correct?

8 **A.** Correct.

9 **Q.** And, once again, Mr. Zeleny was cooperative;
15:41 10 true?

11 **A.** Yes.

12 **Q.** And the officer noted that no crimes were
13 committed.

14 **A.** Correct.

15:41 15 **Q.** And Mr. Zeleny was legally carrying unloaded
16 rifles; correct?

17 **A.** At the time, yes.

18 **Q.** Why was Mr. Zeleny's protest listed under the
19 heading of problem-solving?

15:41 20 **A.** Again, this is not a formal document that is
21 made public. It is an internal document, and the
22 sergeants who create this document can put any
23 information they believe for the good of the order that
24 everybody else in the police department -- would be
15:42 25 useful for them to know, so I don't know why it was put

1 under problem-solving; could have been put under other
2 parts. It's really not formal as to where it goes.

3 Q. Was Mr. Zeleny's protest considered a problem
4 by the City of Menlo Park in 2012?

15:42 5 A. Yes.

6 Q. Why was it considered a problem?

7 A. Because, as it states here, both subjects were
8 wearing military style uniforms, Level 3A tactical
9 vests, one with a ceramic trauma plate. The rifles

15:42 10 carried by the subjects were M1A type .308 caliber, and
11 they each had several loaded ten-round magazines on
12 their person but not loaded in the rifles.

13 That is why it was a problem for the Menlo Park
14 Police Department.

15:43 15 Q. What about that is a problem?

16 A. These two men were a public safety concern,
17 both because of the fact that, very easily, they could
18 load those weapons and become active shooters, number
19 one.

15:43 20 Number two, they created a visual hazard for
21 people who are passing by. And both men put themselves
22 in very dangerous, precarious positions, because if a
23 passerby saw these men in the society we live in today,
24 with active shooters and mass shootings permeating the
15:43 25 world, that a person who happened to have a gun legally

1 may consider them a threat, and who knows what could
2 have happened.

3 So, yes, this was a problem.

15:43 4 Q. At the time that the City -- in the 2012 time
5 frame, when the City of Menlo Park apparently considered
6 Mr. Zeleny's activities a problem, Mr. Zeleny was not
7 doing anything illegal; correct?

8 A. No, he was not doing anything illegal.

15:44 9 Q. He was exercising his constitutional right to
10 bear arms; true?

11 A. Certainly.

12 Q. And Mr. Zeleny's exercise of his constitutional
13 right to bear arms was a problem for the City of Menlo
14 Park?

15:44 15 MR. MASTER: Objection. Argumentative. Asked
16 and answered.

17 THE WITNESS: It caused a public safety issue.

18 Q. (By Mr. Robinson) So his exercise of his
19 constitutional right to bear arms was a problem for the
15:44 20 City of Menlo Park because, in your view, it created a
21 public safety issue; is that accurate?

22 A. That is accurate.

23 MR. ROBINSON: Let's take a look at Exhibit 49.

24 (Exhibit 49 was marked for identification.)

15:46 25 Q. (By Mr. Robinson) Do you recognize Exhibit 49?

1 **A.** I recognize it as a Menlo Park Police report.

2 **Q.** And, for the record, it's MP151 through 154;
3 correct?

4 **A.** Yes.

15:46 5 **Q.** Exhibit 49 describes another of Mr. Zeleny's
6 protests at NEA and the police response to it; correct?

7 **A.** Correct.

8 **Q.** And, among other things, during this protest,
9 Officer Poirier --

15:46 10 **A.** Poirier.

11 **Q.** Poirier. -- followed a vehicle that had
12 stopped to give assistance to Mr. Zeleny; correct?

13 **A.** Yes. Poirier is spelled P-o-i-r-i-e-r.

14 **Q.** He followed a vehicle that had stopped to give
15:47 15 assistance to Mr. Zeleny until it stopped at the
16 Stanford Shopping Mall; is that accurate?

17 **A.** Yes.

18 **Q.** Is there some -- strike that.

19 Do you know whether anyone directed Officer
15:47 20 Poirier to follow that vehicle?

21 **A.** No.

22 **Q.** Is there some policy or procedure at the City
23 of Menlo Park Police Department about when an officer
24 will follow a vehicle like that?

15:47 25 **A.** No.

1 **Q.** So it's up to the officer's individual
2 discretion?

3 **A.** That's correct.

4 **Q.** Do the officers receive any training about
15:47 5 whether or not to follow participants in demonstrations?

6 **A.** They receive training as to typical and routine
7 police practice.

8 **Q.** Is following a vehicle that stops to render
9 assistance to a protest consistent with typical police
15:48 10 practice?

11 **A.** Yes.

12 **Q.** Is interviewing individuals who stop to render
13 assistance to protestors a part of typical police
14 practice for the City of Menlo Park?

15:48 15 **A.** Yes. And in this case, it was a consensual
16 encounter.

17 **Q.** Are officers in the City of Menlo Park trained
18 to do that as part of their training on typical police
19 practice?

15:48 20 MR. MASTER: Objection. Vague and ambiguous.

21 **Q.** (By Mr. Robinson) Let me rephrase.

22 Are officers in the City of Menlo Park trained
23 to follow individuals who stop to render assistance to
24 protestors as part of their training on typical police
15:48 25 practice?

1 MR. MASTER: Same objection. Incomplete
2 hypothetical.

3 Go ahead.

4 THE WITNESS: There is no training that
15:48 5 specifically says, "You should stop or follow certain
6 vehicles."

7 The training states that we may follow any
8 vehicle we choose, as it is discretionary, on a public
9 road. And in this case, and in cases where there may be
15:49 10 some kind of public safety concern, it would be totally
11 appropriate and expected for an officer to take
12 investigative steps to try to determine who was involved
13 in this public safety issue.

14 Q. (By Mr. Robinson) That's true, despite the
15:49 15 fact that no crime was being committed; correct?

16 A. Correct.

17 Q. Let's go on to the next page. And the second
18 paragraph, which is one sentence, a Menlo Park Police
19 undercover unit followed the green -- cream GMC to the
15:49 20 Quality Inn in Palo Alto.

21 Do you see that?

22 A. I do.

23 Q. Is that also consistent with typical police
24 practice in the City of Menlo Park, to follow a
15:50 25 protestor's vehicle, until it stops?

1 **A.** It is a common investigative technique to
2 follow vehicles with unmarked vehicles in numerous types
3 of cases. And in this case, we're dealing with a public
4 safety issue, yes.

15:50 5 **Q.** What were you investigating?

6 **A.** I wasn't investigating anything.

7 **Q.** What was the City of Menlo Park investigating
8 in this situation?

9 **A.** In this case, they were dealing with a public
15:50 10 safety concern with a man who was armed with hundreds of
11 rounds who could pose a public safety threat.

12 **Q.** Were they investigating for a crime, criminal
13 activity?

14 **A.** One that could possibly occur.

15:50 15 **Q.** Are you familiar with any other instances where
16 the City of Menlo Park has engaged undercover vehicles
17 to investigate public safety concerns that don't involve
18 criminal activity?

19 **A.** Hundreds.

15:50 20 **Q.** What other types of public safety issues do
21 officers investigate in unmarked vehicles?

22 MR. MASTER: Just object. Vague and ambiguous.
23 Overbroad. Calls for a narrative.

24 Go ahead.

15:51 25 THE WITNESS: There are numerous cases where

1 detectives or undercover vehicles follow people who have
2 not yet committed crimes that we're able to make an
3 arrest for or have probable cause for.

4 We have investigative techniques where people
15:51 5 are followed on numerous occasions for a myriad of
6 crimes that I could -- that I'd have to list of the
7 types of crimes that detectives and/or narcotics units
8 or gang officers would be investigating or criminal
9 activity that may be occurring.

15:51 10 MR. ROBINSON: Could we read back the last
11 question.

12 (Record read.)

13 Q. (By Mr. Robinson) What other types of public
14 safety issues that don't involve criminal activity or
15:52 15 suspected criminal activity do officers investigate
16 using unmarked vehicles in the city of Menlo Park?

17 MR. MASTER: Same objections.

18 You can answer.

19 THE WITNESS: Unmarked vehicles?

15:52 20 Q. (By Mr. Robinson) Correct.

21 A. Could be gang activity. It could be following
22 people who we suspect may be armed, may be dangerous,
23 may be about to commit a crime. There is numerous times
24 where a vehicle -- unmarked vehicles and marked vehicles
15:52 25 can be used to follow people.

1 **Q.** And in your understanding, it is consistent
2 with typical police practice of the City of Menlo Park
3 to use investigative resources, such as unmarked
4 vehicles, to follow individuals who are not suspected of
15:52 5 committing a crime of any kind?

6 **MR. MASTER:** Objection. Misstates his
7 testimony.

8 **Q.** (By Mr. Robinson) You can answer.

9 **A.** That's not what I said.

15:53 10 **Q.** Okay.

11 Let me ask you: Is it consistent, in your
12 opinion, with typical police practice of the City of
13 Menlo Park to use undercover vehicles to follow people
14 who are not suspected of committing a crime?

15:53 15 **A.** It is typical to use undercover vehicles and
16 even marked vehicles to investigate possible public
17 safety issues, whether they be a crime that is suspected
18 or a crime may be occurring or a crime is about to
19 occur. So that is typical.

15:53 20 **MR. ROBINSON:** Could we read back the last
21 question, please.

22 (Record read.)

23 **Q.** (By Mr. Robinson) And I'm going to ask you to
24 answer that question. That's a yes-or-no question.

15:53 25 Is it typical police practice to use undercover

1 vehicles to follow people who aren't suspected of
2 committing a crime?

3 MR. MASTER: Objection. Asked and answered.
4 Argumentative.

15:54 5 THE WITNESS: I can't answer without qualifying
6 it as I did.

7 Q. (By Mr. Robinson) Is the answer a qualified
8 yes or a qualified no?

9 MR. MASTER: Same objection. Argumentative.

15:54 10 THE WITNESS: It's a qualified yes.

11 Q. (By Mr. Robinson) Going down to the second --
12 I guess it's the third paragraph from the bottom on Page
13 154 of Exhibit 49. There's a reference to following a
14 vehicle that was nearby Mr. Zeleny's protest and
15:54 15 engaging in an enforcement stop.

16 Do you see that?

17 A. I do.

18 Q. During the enforcement stop, the officers asked
19 the driver of the vehicle whether he was associated with
15:55 20 Mr. Zeleny; true?

21 A. Yes.

22 Q. Was that consistent with typical police
23 enforcement practice -- strike that.

24 Was that consistent with typical police
15:55 25 practice of the City of Menlo Park?

1 **A.** The officer clearly had reasonable suspicion to
2 detain this vehicle for having no front plate.

3 **Q.** Was following the vehicle and making an
4 enforcement stop and then asking the driver questions
15:55 5 about association with Mr. Zeleny consistent with
6 typical police practice of the City of Menlo Park?

7 MR. MASTER: Objection. Vague and ambiguous.
8 Incomplete hypothetical.

9 THE WITNESS: I can't answer that question the
15:55 10 way you stated it. I told you that the officer,
11 obviously, had a reasonable suspicion. That's all we
12 need to detain somebody. That is the level of proof
13 necessary to make a Fourth Amendment detention on a
14 person, and that's what was happening -- what occurred
15:56 15 here.

16 **Q.** (By Mr. Robinson) So as the person most
17 qualified for the City of Menlo Park, you can't answer
18 whether it's consistent with typical police practice to
19 follow a vehicle, engage in an enforcement stop, and
15:56 20 then to question the driver about association with
21 Mr. Zeleny; is that accurate?

22 **A.** It is typical to have reasonable suspicion to
23 stop a vehicle, and you can ask any questions you want.
24 The driver doesn't have to answer those questions;
15:56 25 doesn't matter what you ask them.

1 Q. That wasn't my question, Chief Bertini.

2 My question was: Is it typical police practice
3 for the City of Menlo Park, in your capacity as the
4 person most qualified designated by the City of Menlo
15:56 5 Park, to follow a driver, make an enforcement stop, and
6 then question the driver about his association with a
7 protestor?

8 Is that typical police practice?

9 MR. MASTER: First of all, I'm going to object

15:57 10 to the question as being vague and ambiguous.

11 I'm also going to object to your client
12 laughing at the question demonstrably.

13 I'd ask you to act professionally, Mr. Zeleny.
14 Otherwise, I'm going to have to ask you to leave.

15:57 15 MR. ROBINSON: I'm going to object.

16 A, I don't need you to consult with my client.
17 If you have an issue with my client's behavior during
18 the deposition, you can tell me, and I'll relay it to
19 him.

15:57 20 MR. MASTER: I do have an issue.

21 MR. ROBINSON: Okay.

22 You've just expressed it on the record.

23 MR. MASTER: Thank you.

24 So you've heard my objection to it. If you can
15:57 25 answer it, he's answered it, but go ahead.

1 THE WITNESS: The answer is that it is -- as
2 long as the officer had reasonable suspicion to stop the
3 vehicle, he could stop and ask about his association
4 with anybody.

15:57 5 Q. (By Mr. Robinson) I'm not asking whether it
6 was right or wrong for the officer to stop the vehicle.
7 I'm asking if this conduct of following a vehicle,
8 engaging in an enforcement stop, and --

9 (Reporter interruption.)

15:57 10 Q. (By Mr. Robinson) -- questioning the driver
11 about his association with a protestor is consistent
12 with typical police practice in the city of Menlo Park.

13 MR. MASTER: I'm going to continue to object to
14 that question as being vague and ambiguous. It's also
15:58 15 argumentative, and I'd like to tell you why, if you'd
16 let me.

17 MR. ROBINSON: I would appreciate it if you
18 don't.

19 MR. MASTER: Okay.

15:58 20 Well, then, he can answer it one more time.
21 And when he's done with that, he's done with that
22 question, and we'll move on.

23 THE WITNESS: So long as the officer had
24 reasonable suspicion to stop the vehicle, he could ask
15:58 25 any questions, whether it's about a protestor, whether

1 it's about a drug deal he just saw, whether it's about a
2 gang membership he has or a gang person he just spoke
3 to. That can happen.

4 Q. (By Mr. Robinson) Is there any reason you're
15:58 5 unable to answer my question about whether it's typical
6 police practice to follow a car like this?

7 MR. MASTER: Objection. Argumentative. Asked
8 and answered.

9 Don't answer that question.

15:58 10 Move on.

11 Q. (By Mr. Robinson) Are you going to follow your
12 attorney's instruction not to answer that question?

13 A. I am.

14 MR. ROBINSON: Could we mark the record, then.

15:59 15 Let's take a look at Exhibit 50, please.

16 (Exhibit 50 was marked for identification.)

17 Q. (By Mr. Robinson) Do you recognize Exhibit 50?

18 A. I do.

19 Q. It's a -- for the record, a multiple-page
16:00 20 document, MP120 to 124; correct?

21 A. Yes.

22 Q. If I could have you turn to MP122, please.

23 There is a reference in the document, about halfway down
24 this page, to contact with Michael Zeleny.

16:00 25 Do you see that?

1 **A.** I do.

2 **Q.** The officer notes, again, that Mr. Zeleny was
3 very cooperative.

4 Do you see that?

16:00 5 **A.** I do.

6 **Q.** That's consistent with your understanding of
7 Mr. Zeleny's behavior during all of his protests.

8 **A.** Certainly.

9 MR. ROBINSON: Why don't we mark this as

16:01 10 **Exhibit 51**, please.

11 (**Exhibit 51** was marked for identification.)

12 **Q.** (By Mr. Robinson) **Exhibit 51** is multiple pages
13 from MP206 to 210; correct?

14 **A.** Correct.

16:02 15 **Q.** Do you recognize **Exhibit 51**?

16 **A.** I do.

17 **Q.** What is it?

18 **A.** It is the minutes from a management -- police
19 management staff meeting on August 7th, 2012.

16:02 20 **Q.** You attended that meeting; correct?

21 **A.** I did.

22 **Q.** If you could turn to Page 210, please. There
23 is a reference to Zeleny.

24 Do you see where I'm referring to, middle of

16:02 25 the page?

1 **A.** Yes.

2 **Q.** In that reference, it talks about "It has been
3 recently discovered that he," meaning Mr. Zeleny, "may
4 be using marijuana."

16:02 5 Do you see that?

6 **A.** I do.

7 **Q.** How was that recently discovered?

8 **A.** No idea.

9 **Q.** It goes on to discuss how if it's proven that
16:02 10 he's using marijuana, his weapons can be taken away.

11 Do you see that?

12 **A.** That's what it says.

13 **Q.** At this point in time, August of 2012, is it
14 the City's desire to have Mr. Zeleny's weapons taken
16:03 15 away?

16 **A.** No.

17 **Q.** Why was there a discussion during the City
18 Police Department meeting about taking away Mr. Zeleny's
19 weapons?

16:03 20 **A.** This is something that Sergeant Kaufman brought
21 up during the meeting, obviously, since it's under her
22 name. And my understanding is that she had had contact
23 with the Santa Clara D.A.'s Office and Palo Alto Police
24 Department, so I assume that that information came from
16:03 25 them.

1 Q. What was Sergeant Kaufman's role regarding
2 Mr. Zeleny's protests?

3 A. She was the detective sergeant at the time.

4 Q. Was she the detective sergeant that was in
16:03 5 charge of addressing Mr. Zeleny's protests?

6 A. I'm sorry. Let me correct myself. She wasn't
7 the detective sergeant yet. At this time, she was the
8 special events sergeant, so she was in charge of dealing
9 with all the protests that Mr. Zeleny had during that
16:04 10 time.

11 MR. ROBINSON: Why don't we mark this as
12 Exhibit 52, please.

13 (Exhibit 52 was marked for identification.)

14 Q. (By Mr. Robinson) For the record, Exhibit 52
16:04 15 is multiple pages from MP88 to MP94; correct?

16 A. Yes.

17 Q. Do you recognize Exhibit 52?

18 A. I do.

19 Q. It's more staff meeting minutes from the City
16:05 20 of Menlo Park Police Department; true?

21 A. April 3rd, 2012.

22 Q. And it's meeting minutes from a management
23 staff meeting; correct?

24 A. Correct.

16:05 25 Q. Did you attend this meeting?

1 **A.** I did.

2 **Q.** If I could have you look at Page 93, please.

3 Under the heading "Sergeant Kaufman," does that reflect

4 something that Sergeant Kaufman presented at the

16:05 5 meeting?

6 **A.** Yes.

7 **Q.** To the best of your recollection, does that

8 fairly summarize Sergeant Kaufman's presentation at the

9 time?

16:05 10 **A.** I have -- I can only go off what's written

11 here. I don't remember this meeting from that many

12 years ago.

13 **Q.** In the statement in the minutes, Sergeant

14 Kaufman is noted as saying there seems to be no firm

16:06 15 solution to ending his protests.

16 Do you see that?

17 **A.** I see that.

18 **Q.** That's a reference to Mr. Zeleny's protests;

19 true?

16:06 20 **A.** Yes.

21 **Q.** Was the City looking for a firm solution to end

22 Mr. Zeleny's protests at the time of this meeting?

23 **A.** I don't know what she meant by that. In the

24 preceding sentence, she talks about having met with a

16:06 25 captain from the Sheriff's Office.

1 And my understanding, at the time, is that
2 there were also protests outside of Menlo Park, so I'm
3 not --

4 **Q.** Go ahead.

16:06 5 **A.** So I'm not sure what she's -- what she's
6 referring to.

7 **Q.** There's a protest outside of Menlo Park that
8 you just referenced. Those are protests by Mr. Zeleny;
9 correct?

16:06 10 **A.** Yes.

11 **Q.** Did you have any discussions with Mark Weiss
12 about ending Mr. Zeleny's protests?

13 **A.** I did not.

14 **Q.** The last sentence of the section under Sergeant
16:07 15 Kaufman's name relates to a legislative committee
16 meeting.

17 Do you see that?

18 **A.** I do.

19 **Q.** Is it your understanding that a -- that one or
16:07 20 more photos of Mr. Zeleny were presented to a
21 legislative committee considering the ban on open carry
22 of long guns?

23 **A.** That's my understanding.

24 **Q.** How did you gain that understanding?

16:07 25 **A.** I don't remember whether it was through

1 Sergeant Kaufman or through some other avenue.

2 Q. These photos were photos taken by the City of
3 Menlo Park; true?

4 A. Yes.

16:07 5 Q. And they were provided to some other agency to
6 submit in a legislative committee meeting; correct?

7 A. That's my understanding.

8 Q. Purpose of submitting them was to get
9 legislation enacted prohibiting the open carry of long
16:07 10 guns; correct?

11 A. I believe the purpose was to show what a
12 protest using long guns looked like. I'm not sure that
13 that was the reason why. I don't know the -- the
14 reasoning why they used those photos.

16:08 15 Q. Do you have an understanding of the reasoning
16 that the City of Menlo Park submitted them for inclusion
17 in that meeting?

18 A. I believe they were requested.

19 Q. Requested by whom?

16:08 20 A. I don't know.

21 Q. Is there someone else within the City that
22 would know?

23 A. No.

24 Q. Why not?

16:08 25 A. Because she's retired.

1 **Q.** That would be Sergeant Kaufman?

2 **A.** Correct.

3 **Q.** Was the ban on open carry of long guns enacted
4 following that legislative committee meeting?

16:08 5 **A.** I don't know the timing. I don't know the
6 timing of when the meeting was and when it was enacted.
7 I assume it was after the legislative -- well --

8 MR. MASTER: Don't assume. If you don't
9 know --

16:08 10 THE WITNESS: I don't know.

11 **Q.** (By Mr. Robinson) In your experience with the
12 City of Menlo Park, are there other instances where the
13 City submitted materials to be used in legislative
14 meetings?

16:09 15 MR. MASTER: Objection just to the extent it
16 lacks foundation and calls for speculation and falls
17 outside of his expertise.

18 But go ahead.

19 THE WITNESS: As far as legislation in the
16:09 20 state?

21 **Q.** (By Mr. Robinson) Are there other instances
22 that you're aware of where the Menlo Park Police
23 Department has submitted information to be included in
24 legislative proceedings for state legislation?

16:09 25 **A.** I believe so, but I -- I believe so with some

1 local legislators who asked for information because they
2 were -- they were considering authoring a bill.

3 Q. Other than that instance, are you aware of any
4 other instances where the Menlo Park Police Department
16:09 5 submitted information for consideration by a state
6 legislative body?

7 A. Besides those instances, no.

8 Q. It's a relatively unusual occurrence at the
9 City of Menlo Park Police Department; true?

16:10 10 A. Yes.

11 Q. Other than the photos being requested, are you
12 aware of any other reason why the City submitted those
13 photos of Mr. Zeleny?

14 A. I'm not aware of any.

16:10 15 MR. ROBINSON: Let's mark that as Exhibit 53.

16 (Exhibit 53 was marked for identification.)

17 Q. (By Mr. Robinson) For the record, Exhibit 53
18 is one page. It's MP00004; correct?

19 A. Yes.

16:11 20 Q. Do you recognize Exhibit 53?

21 A. I recognize it as an e-mail.

22 Q. It's before your time at the City of Menlo
23 Park?

24 A. It is.

16:11 25 Q. This -- the bottom e-mail on this chain refers

1 to working collaboratively with NEA and Mr. Zeleny, as
2 well as contact with the legal counsel of NEA; is that a
3 fair characterization?

16:11 4 MR. MASTER: Objection. Document speaks for
5 itself.

6 THE WITNESS: The originating e-mail on this
7 thread is from Chief Brian Roberts to Glen Rojas,
8 R-o-j-a-s, who was the city manager at that time. CC'ed
9 on this e-mail are Sergeant Sharon Kaufman and, at that
16:11 10 time, Commander Lacey Burt, and it does speak about a
11 protest Mr. Zeleny did. I assume -- sorry.

12 It's dated on the 28th, and that the chief
13 states that NEA is aware of the latest developments and
14 that they have -- and that the police department and NEA
16:12 15 have participated in conference calls with their legal
16 counsel.

17 Q. (By Mr. Robinson) Is it accurate, in your
18 experience, that the Menlo Park Police Department has
19 worked collaboratively with NEA in connection with
16:12 20 Mr. Zeleny's protests?

21 MR. MASTER: Object. Can you just read that
22 back. I'm sorry. I missed it.

23 (Record read.)

24 THE WITNESS: We have -- as a stakeholder, we
16:12 25 have worked with them. I'm not sure. It depends on

1 what your definition of "collaboratively" is. We have,
2 in fact, as a stakeholder and as the organization that
3 is the focus of Mr. Zeleny's protests, they have asked
4 us for assistance, and they are a business in our city,
16:13 5 so we provided assistance.

6 **Q.** (By Mr. Robinson) In your time at the City of
7 Menlo Park Police Department, what has the City done to
8 work collaboratively with NEA as a stakeholder?

9 MR. MASTER: Objection. Vague and ambiguous.
16:13 10 Overbroad.

11 You can answer.

12 THE WITNESS: We have responded to their
13 requests when Mr. Zeleny has shown up armed and
14 protesting. We have met with them, when they have had
16:13 15 concerns, to address their concerns about the safety
16 issues with the armed protests. We have invited them to
17 be in the meeting with all the stakeholders regarding
18 Mr. Zeleny's protests and answering any questions that
19 we legally could of them.

16:14 20 **Q.** (By Mr. Robinson) You've met personally with
21 NEA, true, in connection with Mr. Zeleny's protests?

22 **A.** Well, NEA is a company.

23 **Q.** Thank you.

24 You've met personally with representatives of
16:14 25 NEA in connection with Mr. Zeleny's protests; true?

1 **A.** I've met with a representative.

2 **Q.** That's the security individual?

3 **A.** Tresmontan.

16:14 4 **Q.** Have you ever met personally with Mr. Zeleny in
5 connection with his protests before the special event
6 permit process?

7 **A.** No.

8 **Q.** Do you know whether any officer of the City of
9 Menlo Park Police Department ever met with Mr. Zeleny,
16:14 10 other than contacting him during the protests?

11 **A.** Not that I'm aware of.

12 **Q.** Was Mr. Zeleny invited to be at any meeting
13 with the City of Menlo Park Police Department prior to
14 the special events permit application?

16:15 15 **A.** No.

16 **Q.** Fair enough.

17 Were any of Mr. Zeleny's questions, to your
18 knowledge, about the protests answered by the City of
19 Menlo Park, other than in connection with the special
16:15 20 events or film permit?

21 MR. MASTER: I'm sorry. Can you read that
22 back.

23 (Record read.)

24 **Q.** (By Mr. Robinson) Let me rephrase that.

16:15 25 Prior to Mr. Zeleny applying for the special

1 events permit in 2015, did the City of Menlo Park have
2 any dialogue with him about his protests, other than
3 through officers contacting him during those protests?

4 **A.** I believe Mr. Zeleny sent several e-mails, and
16:15 5 I'm not sure when he sent them, but they were in -- they
6 were advising us and numerous other people he blanketed
7 about protests or the issues he had.

8 So he did e-mail -- send e-mails prior to some
9 of his protests.

16:16 10 MR. ROBINSON: Mark this as **Exhibit 54**.

11 (**Exhibit 54** was marked for identification.)

12 **Q.** (By Mr. Robinson) For the record, **Exhibit 54**
13 is one page marked MP60; correct?

14 **A.** Yes.

16:16 15 (Reporter interruption.)

16 **Q.** (By Mr. Robinson) Do you recognize **Exhibit 54**?

17 **A.** I do.

18 **Q.** It's an e-mail exchange between you and Timothy
19 Brackett; correct?

16:17 20 **A.** Who is a sergeant with the police department.

21 **Q.** And it's an e-mail exchange; correct?

22 **A.** Correct.

23 **Q.** In the very bottom e-mail on this exchange,
24 there's a reference, in Mr. Brackett's e-mail, to they,
16:17 25 which is -- strike that.

1 In the sentence that reads "They are now in the
2 process of working on an EPO," who is the "they"
3 referenced in that sentence?

4 **A.** If you read that entire paragraph, "I have
16:17 5 spoken with reps associated with Rosewood and NEA. They
6 are now in the process of working on an EPO. I will
7 keep you posted with any additional info as it arises.
8 I don't feel comfortable with leaving Zeleny and his
9 partner Wong without officers on scene. Thanks. Tim."

16:17 10 The "they" are Rosewood and NEA.

11 **Q.** What's an EPO?

12 **A.** Emergency protective order.

13 **Q.** What is the purpose of an emergency protective
14 order?

16:18 15 **A.** An emergency protective order is an order that
16 is sought by a police officer based on a victim or
17 reporting party who believes they are in immediate
18 danger and that they do not have the time or the danger
19 is so great that the time it would take to go to court
16:18 20 and file a TRO, a temporary restraining order, would be
21 too long, so a person could request the police
22 department to seek an emergency protective order.

23 **Q.** Did NEA request that the City seek an emergency
24 protective order?

16:18 25 **A.** No.

1 **Q.** Did the City propose seeking an emergency
2 protective order?

3 **A.** No.

16:18 4 **Q.** How did the issue of a potential emergency
5 protective order come up?

6 **A.** They -- the Rosewood -- the representatives
7 from Rosewood and NEA brought it up to Tim Brackett.

8 **Q.** When you say "brought it up," what do you mean?

9 **A.** Well, I'm just reading what the e-mail says.

16:19 10 **Q.** Do you know whether it was the idea of Rosewood
11 and NEA or the idea of Mr. Brackett?

12 **A.** I don't know who -- where the idea initiated --
13 or originated, I should say.

14 **Q.** Did the City, in or about February of 2012,
16:19 15 assist NEA in preparing an EPO application?

16 **A.** No.

17 **Q.** Did the City offer to assist NEA in preparing
18 an EPO application?

19 **A.** I'm not sure if Sergeant Brackett did or not.
16:19 20 There is a process for getting an EPO. A person can't
21 do it on their own. It has to be -- it has to be filled
22 out by a police officer, sought by a police officer.

23 **Q.** In your e-mail response to Officer Brackett,
24 you refer to -- you say, "If they request it, we would
16:20 25 fill out the application for it."

1 Do you see that?

2 **A.** I do.

3 **Q.** In February of 2012, were you willing to seek
4 an EPO on behalf of NEA?

16:20 5 **A.** This e-mail exchange was me correcting the
6 sergeant in that the police department, if they
7 requested an EPO, we would have to fill out the form.
8 It doesn't -- not the other way around.

9 So the purpose of this e-mail, what you see
16:20 10 there, is me correcting the sergeant in his either
11 incorrect assumption or a typo, and maybe he meant
12 temporary restraining order.

13 **Q.** Have you ever communicated with anyone at NEA
14 about preparing an EPO?

16:20 15 **A.** No.

16 **Q.** Do you know whether any officer of the City of
17 Menlo Park has communicated with NEA about preparing an
18 EPO regarding Mr. Zeleny?

19 **A.** Besides what you see in front of you? No.

16:21 20 **Q.** Are you aware that NEA unsuccessfully sought a
21 temporary restraining order against Mr. Zeleny?

22 **A.** Unsuccessfully?

23 **Q.** Correct.

24 **A.** I was under the impression that there was, in
16:21 25 fact, a restraining order.

1 **Q.** Are you aware of NEA or representatives of NEA
2 unsuccessfully seeking a temporary restraining order?

3 **A.** No.

4 **Q.** Have you had any discussion, other than that
16:21 5 e-mail, within the City of Menlo Park Police Department
6 about getting an EPO against Mr. Zeleny?

7 **A.** I'm sorry. Say that again.

8 **Q.** Other than this e-mail exchange, has there been
9 any discussion within the City of Menlo Park about
16:21 10 getting an EPO against Mr. Zeleny?

11 **A.** No.

12 **Q.** Did you tell Officer Brackett that you didn't
13 think an EPO would be a good idea?

14 **A.** Sergeant Brackett.

16:21 15 **Q.** Did you tell Sergeant Brackett that you didn't
16 think an EPO would be a good idea?

17 **A.** The subject matter of EPO did not come up aside
18 from this e-mail, so I never spoke to him about it
19 again.

16:22 20 **Q.** So the sum total of your communications with
21 Sergeant Brackett were he talked about NEA and Rosewood
22 filling out an EPO application, you sent an e-mail which
23 you understood to be correcting him about who fills it
24 out, and that was the end of the question?

16:22 25 **A.** Correct.

1 **Q.** Do you know whether Sergeant Kaufman and
2 Sergeant Brackett further discussed the EPO?

3 **A.** I don't know.

4 **Q.** You mentioned before that in order for a
16:22 5 criminal prosecution to take place, there needs to be a
6 victim.

7 Do you recall that?

8 **A.** Correct.

9 **Q.** Who was the victim in the criminal prosecution
16:22 10 of Mr. Zeleny?

11 **A.** State of California.

12 **Q.** The State of California was not a reporting
13 victim, I assume.

14 **A.** That's correct.

16:23 15 **Q.** Did you have discussions with the district
16 attorney about prosecuting Mr. Zeleny?

17 **A.** Yes.

18 **Q.** What was discussed?

19 **A.** The discussion was whether or not the gun and
16:23 20 holster, in the configuration that it was found in and
21 photos were taken of, would constitute a violation of
22 that Penal Code section for carrying a concealed
23 firearm.

24 **Q.** What was your view of that?

16:23 25 **A.** My view, that it was, in fact, unlawful to

1 carry it in that configuration.

2 Q. Did anyone at the District Attorney's Office
3 agree with you or disagree with you about that?

4 A. Not that I'm aware of.

16:24 5 MR. ROBINSON: Can we mark this as 55, please.

6 (Exhibit 55 was marked for identification.)

7 Q. (By Mr. Robinson) For the record, Exhibit 55
8 is a one-page document, MP5397; correct?

9 A. Correct.

16:24 10 MR. MASTER: And, Counsel, for the record, I
11 believe this is a -- this is the front page of multiple
12 documents, is it not? Multiple pages?

13 MR. ROBINSON: I'd rather not get into how
14 documents were produced.

16:24 15 MR. MASTER: Well, I'm just trying to make -- I
16 just want to make sure the record is clear that I think
17 this appears to be a front page of multiple pages of
18 documents. It's an incomplete document.

19 You can ask questions about this. I'm not
16:25 20 going to prevent you from doing that. I just want the
21 record to reflect that this is an incomplete set.

22 MR. ROBINSON: We have five minutes left of the
23 deposition, and I'd appreciate no more speeches on the
24 record, as I've told you throughout the day, but --

16:25 25 MR. MASTER: Just go. Just go. All right?

1 Just do it.

2 Q. (By Mr. Robinson) Do you recognize what we've
3 marked as Exhibit 55?

4 A. Yes.

16:25 5 Q. What is it?

6 A. This is a memo from the San Mateo County
7 District Attorney's Office to San Mateo County police
8 officers regarding the open carry of firearm in 2010.

9 Q. You believe that there's more to this document?

16:25 10 A. Yes.

11 Q. Do you have an understanding of whether the
12 City has produced the remainder of this document?

13 A. Yes.

14 Q. Where is it in the City's production?

16:25 15 A. I don't know.

16 Q. Is it in Mr. -- so I'll represent to you that
17 this page of the document is in Mr. Zeleny's file that's
18 been produced. I'm trying to figure out where the rest
19 of it is, since I haven't seen it in the production
16:25 20 anywhere.

21 A. I don't know the answer to that.

22 Q. Okay.

23 So let's just take the page we have. This is
24 guidance from the District Attorney's Office; correct?

16:26 25 A. Correct.

1 **Q.** It's guidance relating to the open carry of
2 firearms; true?

3 **A.** The open carry of unconcealed, unloaded
4 firearms in 2010.

16:26 5 **Q.** And part of the guidance is that a person may
6 carry an unconcealed, unloaded firearm worn openly in a
7 belt holster in a public place or on a public street; is
8 that true?

9 **A.** This is the law as it was in 2010. That is
16:26 10 correct.

11 **Q.** Did the law change between 2010 and 2012
12 related to the carrying of concealed firearms?

13 **A.** Concealed firearms?

14 **Q.** Correct.

16:26 15 **A.** No.

16 **Q.** So when Mr. Zeleny was prosecuted for carrying
17 a concealed firearm --

18 MR. MASTER: Go ahead.

19 **Q.** (By Mr. Robinson) When Mr. Zeleny was
16:26 20 prosecuting -- prosecuted for carrying a concealed
21 firearm, was this document, **Exhibit 55**, representative
22 of the policy of the City of Menlo Park on that issue?

23 MR. MASTER: Objection. Vague, ambiguous,
24 confusing, unintelligible, lacks foundation, calls for
16:27 25 speculation, and really seeks information that's not

1 relevant to this litigation.

2 That being said, he can answer the question.

3 Okay?

4 THE WITNESS: This memo is a memo of

16:27 5 information from the D.A.'s Office to each police
6 department regarding the open carry as we defined it
7 this morning, if you recall --

8 Q. (By Mr. Robinson) Sure.

9 A. -- of firearms which were openly carried, which
16:27 10 was legal at the time. This does not -- this does not
11 talk about a concealed firearm, which was still illegal
12 in 2010.

13 Q. Okay.

14 Was it your understanding, in 2012 when you
16:27 15 made the decision to refer Mr. Zeleny's case for
16 prosecution, that a person could carry an unloaded
17 firearm in a belt holster without violating California
18 law?

19 MR. MASTER: Objection. Vague and ambiguous.

16:28 20 Incomplete hypothetical. Calls for a legal conclusion.
21 Also has no relevance to this litigation.

22 You can answer.

23 THE WITNESS: Unconcealed, yes.

24 Q. (By Mr. Robinson) The device that Mr. Zeleny
16:28 25 carried the allegedly concealed weapon in was a belt

1 holster; correct?

2 **A.** It was a covered leather brown holster with a
3 padlock on it -- or a small padlock. I'm not sure what
4 you call it; a lock on it.

16:28 5 **Q.** It was a belt holster; correct?

6 It was a holster that he wore on his belt;
7 correct?

8 **A.** It was a holster that you would typically wear
9 on your belt; that's correct.

16:29 10 **Q.** In your understanding, did it fit the
11 definition of a belt holster?

12 **A.** Yes.

13 **Q.** And in Mr. Zeleny's criminal case, the Court
14 ultimately found that he carried the weapon in a holster
16:29 15 designed for that purpose; you're aware of that; right?

16 MR. ROBINSON: Objection. Lacks foundation.
17 Calls for speculation. It's completely irrelevant to
18 this litigation. Harassing and argumentative.

19 You can answer.

16:29 20 THE WITNESS: I'm not aware of that.

21 **Q.** (By Mr. Robinson) Did you ever see the order
22 acquitting Mr. Zeleny of the concealed weapons charge?

23 **A.** I don't believe I ever read the actual order.

24 **Q.** Did you ever become aware of the reasons that
16:29 25 Mr. Zeleny was acquitted of that charge?

1 **A.** No.

2 **Q.** Did you ever seek out information about why
3 Mr. Zeleny was acquitted?

4 **A.** No.

16:29 5 **Q.** Did the acquittal change the City of Menlo
6 Park's practices or policies in any way?

7 **A.** No.

8 MR. ROBINSON: I think we're at 4:30. If you'd
9 like to quit at 4:30, we can do that now.

16:30 10 MR. MASTER: Well, as we discussed off the
11 record, you're not going to finish today, and I have an
12 obligation I'd like to attend to this evening.

13 So in light of that fact, why don't we stop
14 now, and we can return at a mutually convenient date to

16:30 15 complete the chief's deposition.

16 MR. ROBINSON: That works. Why don't we go off
17 for just a second to figure out a stipulation.

18 MR. MASTER: We just did, didn't we?

19 MR. ROBINSON: A stipulation for the record.

16:30 20 (Reporter interruption.)

21 MR. MASTER: I guess the record will be handled
22 per code. Thank you.

23 THE VIDEOGRAPHER: This now concludes the
24 videotaped deposition of Chief Dave Bertini on March

16:30 25 19th, 2019. We are now going off the record. The time

1 is 4:29 p.m.

2 (Whereupon, the videotaped deposition of CHIEF
3 DAVE BERTINI, Volume I, concluded at 4:29 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DECLARATION OF WITNESS

I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed this _____ day of _____,
201____, at _____, _____.
(City) (State)

1 I, HEATHER J. BAUTISTA, CSR No. 11600, Certified
2 Shorthand Reporter, certify:

3 That the foregoing proceedings were taken before
4 me at the time and place therein set forth, at which
5 time the witness declared under penalty of perjury; that
6 the testimony of the witness and all objections made at
7 the time of the examination were recorded
8 stenographically by me and were thereafter transcribed
9 under my direction and supervision;

10 That the foregoing is a full, true, and correct
11 transcript of my shorthand notes so taken and of the
12 testimony so given;

13 () Reading and signing was requested.

14 () Reading and signing was waived.

15 (XX) Reading and signing was not requested.

16 I further certify that I am not financially
17 interested in the action, and I am not a relative or
18 employee of any attorney of the parties, nor of any of
19 the parties.

20 I declare under penalty of perjury under the laws
21 of California that the foregoing is true and correct.

22 Dated: March 31, 2019

23

24

HEATHER J. BAUTISTA, CSR, CRR, RPR, CLR

25

Exhibit F

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 ---000---

4 MICHAEL ZELENY,

5 Plaintiff,

6 vs.

Case No. CV 17-7357 JCS

7 GAVIN NEWSOM, et al.,

8 Defendants.

_____ /

9 Pages 278 - 286 ARE CONFIDENTIAL

10 AND BOUND SEPARATELY

11
12 Pages 310 - 324 ARE CONFIDENTIAL

13 AND BOUND SEPARATELY

14
15 CONTINUED VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

16 BY VIDEOCONFERENCE

17 (Volume II - Pages 229 to 534

18
19 Taken before DENISE M. LOMBARDO, CSR No. 5419

20 RPR, RMR, RDR, CRR

21 August 7, 2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGE

EXAMINATION BY MR. ROBINSON

236

WHEREUPON, THE DEPONENT WAS INSTRUCTED NOT TO ANSWER
THE FOLLOWING QUESTIONS:

PAGE	LINE
------	------

237	11
-----	----

262	17
-----	----

273	10
-----	----

273	16
-----	----

274	3
-----	---

449	18
-----	----

1	E X H I B I T S		
2	PLAINTIFF'S		PAGE
3	Exhibit 250	City of Menlo Park Special	247
4		Event Application, Bates	
5	Exhibit 251	No. MP 1938 through MP 1950	
6		Defendant Dave Bertini's	260
7	Exhibit 252	Second Supplemental Response	
8		to Plaintiff's Interrogatories	
9		Agreement for Maintenance of	265
10		State Highway in the City of	
11		Menlo Park, Bates No. MP 6656	
12		through MP 6673	
13	Exhibit 253	Test messages, Bates No. MP	269
14		6683 through MP 6688	
15	Exhibit 254	Menlo Park Police Department	287
16		letter dated January 1, 2010,	
17		Bates No. MP 5382 through MP	
18		5388	
19	Exhibit 255	E-mail correspondence, Bates	298
20		No. MP 51 through MP 52	
21	Exhibit 256	E-mail correspondence, Bates	301
22		No. MP 5380 through MP 5381	
23	Exhibit 257	(Confidential document)	---
24	Exhibit 258	Menlo Park Police Department	345
25		CAD Incident Report, dated	
		2/27/2019, Bates No. MP 5095	
		through MP 5096	
	Exhibit 259	Menlo Park Police Department	354
		Felony Report 12-1825, Bates	
		No. MP 170 through MP 179	
	Exhibit 260	Menlo Park Police Department	360
		General Case Report 12-1596,	
		Bates No. MP 1858 through MP	
		1866	

1		E X H I B I T S (cont'd)	
2	PLAINTIFF'S		PAGE
3	Exhibit 261	E-mail correspondence, Bates No. MP 219 through MP 221	365
4	Exhibit 262	E-mail correspondence, Bates No. MP 258 through MP 260	385
5			
6	Exhibit 263	E-mail correspondence, Bates No. MP 296 through MP 300	399
7	Exhibit 264	Menlo Park Police Department Agenda Items, September 2, 2015, Bates No. 5326 through MP 5337	405
8			
9			
10	Exhibit 265	E-mail correspondence, Bates No. 345 through MP 350	411
11	Exhibit 266	E-mail correspondence, Bates No. NEA_Subpoena 37	416
12			
13	Exhibit 267	E-mail correspondence, Bates No. MP 451 through MP 456	435
14	Exhibit 268	E-mail correspondence, Bates No. MP 473 through MP 476	457
15			
16	Exhibit 269	Letter dated September 12, 2016, Bates No. MP 948 through MP 951	466
17			
18	Exhibit 270	E-mail correspondence, Bates No. MP 883 through MP 886	470
19	Exhibit 271	E-mail correspondence, Bates No. MP 1195 through MP 1205	471
20			
21	Exhibit 272	E-mail correspondence, Bates No. MP 1290 through MP 1299	501
22	Exhibit 273	E-mail correspondence, Bates No. 1415 through MP1426	507
23			
24			
25			

1 CONTINUED VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

2
3 BE IT REMEMBERED, that pursuant to Notice, and on
4 the 7th day of August 2020, commencing at the hour of
5 10:05 a.m., before me, DENISE M. LOMBARDO, a Certified
6 Shorthand Reporter, appeared by videoconference CHIEF
7 DAVE BERTINI, produced as a witness in said action, and
8 being by me first duly sworn, was thereupon examined as
9 a witness in said cause.

10
11 ---o0o---

12 APPEARANCES:

13
14 Appearing on behalf of the Plaintiff:

15 DAMION ROBINSON (by Zoom)

16 DAVID MARKEVITCH (by Zoom)

17 Affeld Grivakes LLP

18 2049 Century Park East, Suite 2460

19 Los Angeles, California 90067

20 (310) 979-8700
21
22
23
24
25

1 Appearing on behalf of the Defendant City of Menlo Park;
2 and the Deponent, Chief Dave Bertini:

3 TODD H. MASTER (by Zoom)
4 Howard, Rome, Martin & Ridley LLP
5 1900 O'Farrell Street, Suite 280
6 San Mateo, California 94403
7 (650) 365-7715
8 tmaster@hrmrlaw.com

9
10 Appearing on behalf of the Defendant Attorney General
11 Xavier Becerra:

12 JOHN W. KILLEEN (by Zoom)
13 Deputy Attorney General
14 Office of the Attorney General
15 (916) 210-6045
16 john.killeen@doj.ca.gov

17
18 ALSO PRESENT:

19 Ted Hoppe, Videographer (by Zoom)
20 Veritext Legal Solutions

21
22 Michael Zeleny (by Zoom)

1 THE VIDEOGRAPHER: Good morning. We are
2 going on the record. The time now is -- the time
3 now on the video monitor is 10:05 on August 7th,
4 2020. This is media unit 1, Volume II, in the
5 deposition of Chief Dave Bertini in the matter of 10:05
6 Michael Zeleny vs. Gavin Newsome, et al., filed in
7 the United States District Court, Northern District
8 of California, case No. CV 17-7357 JCS.

9 This video deposition is being held via
10 remote proceedings, hosted by Veritext. 10:06

11 My name is Ted Hoppe. I'm from the firm
12 Veritext. I'm the videographer. The court
13 reporter today is Denise Lombardo, also from
14 Veritext.

15 Counsel, could you please voice identify 10:06
16 yourselves and state whom you represent.

17 MR. ROBINSON: Damion Robinson, taking the
18 deposition on behalf of Michael Zeleny.

19 MR. MARKEVITCH: David Markevitch for
20 Plaintiff Michael Zeleny. 10:06

21 MR. MASTER: Todd Master for Defendant
22 City of Menlo Park and the witness.

23 MR. KILLEEN: John Killeen for Defendant
24 Attorney General Xavier Becerra.

25 MR. ROBINSON: We should note for the 10:07

1 record that Michael Zeleny is on, but on mute.

2 THE VIDEOGRAPHER: So would you like us to
3 re-swear the witness, then?

4 MR. ROBINSON: Yeah, why don't we do that.

5 CHIEF DAVE BERTINI,
6 sworn as a witness,
7 testified as follows:

8 THE VIDEOGRAPHER: Please proceed.

9 EXAMINATION BY MR. ROBINSON:

10 Q. Good morning, Chief Bertini. 10:07

11 A. Good morning.

12 Q. So we're resuming your deposition from one
13 that was taken about a year ago, maybe a little
14 more than a year ago.

15 Do you recall the admonitions that were 10:07
16 given last time?

17 A. Yes.

18 Q. All right. You understand that you're
19 under oath; correct?

20 A. I do. 10:07

21 Q. And you understand that you're testifying
22 both in your individual capacity and as a
23 representative of the City of Menlo Park?

24 A. I do.

25 Q. Have you done any additional prep for 10:08

1 today's session of the deposition?

2 A. I have.

3 Q. When did that take place?

4 A. Probably the last month or so.

5 Q. Did you meet with anyone to prep? 10:08

6 A. I did.

7 Q. Who did you meet with?

8 A. My attorney, Todd Master.

9 Q. Approximately how many times?

10 A. Once. 10:08

11 Q. For how long?

12 MR. MASTER: I'd going to object. The

13 question is not relevant. It violates the

14 attorney-client privilege and work product, so I'll

15 instruct him not to answer that question. 10:08

16 BY MR. ROBINSON:

17 Q. Are you going to follow your attorney's

18 instruction not to answer?

19 A. Yes.

20 Q. Did you do anything, other than meeting 10:08
21 with Mr. Master, to prep for the deposition today?

22 A. I did.

23 Q. What else did you do?

24 A. I reviewed transcripts of my own
25 deposition, which was, like you said, over a year 10:08

1 ago, and the depositions of the other witnesses,
2 along with reviewing some of the items that were
3 marked as evidence.

4 Q. Did you review all of the other deposition
5 transcripts? 10:09

6 A. Yes, I did review all the other deposition
7 transcripts.

8 Q. And what documents did you review, aside
9 from deposition transcripts?

10 A. Just the documents that were referred to 10:09
11 in the depositions of the other witnesses. I
12 couldn't tell you exactly which ones they were.
13 There were lots of them.

14 MR. MASTER: Just briefly, a belated
15 objection to the fact that he reviewed all of the 10:09
16 witnesses. I'm not sure he knows every witness who
17 was deposed necessarily. You might want to lay
18 some foundation for that.

19 MR. ROBINSON: Probably not important
20 enough to spend time on. Okay. 10:09

21 BY MR. ROBINSON:

22 Q. Why don't we get started where we left off
23 last time, which is the special events program
24 process.

25 Are there any city ordinances that govern 10:10

1 the special events program process?

2 A. I'm not sure of any specific ordinances

3 that exist. There are procedures within the city.

4 There are ordinances that deal with associated

5 factors for special events, such as noise levels, 10:10

6 blocking sidewalks, traffic, things of that nature,

7 but nothing specifically about the special events

8 program that I'm aware of.

9 Q. When you talk about procedures, are there
10 ordinances governing the procedures that are 10:10
11 followed?

12 MR. MASTER: Objection.

13 THE WITNESS: They're not --

14 THE REPORTER: Excuse me.

15 BY MR. ROBINSON:

16 Q. Sorry, Chief Bertini. Let's start that
17 again so we have a clean question.

18 Are you aware of any ordinances that

19 govern the procedures that are followed in

20 connection with special event permit applications? 10:11

21 A. I am not aware of any city ordinances that

22 govern the procedure. These are just procedures

23 that are created by the city itself.

24 Q. Is that part of the special events process
25 materials that we talked about last time? 10:11

1 A. Yes.

2 Q. Okay. Are there any ordinances governing
3 film permits that you're aware of?

4 A. I'm not aware of any specific ordinances
5 governing film permits. 10:11

6 Q. Would the film permitting process also be
7 governed by the written materials, including the
8 film permit guidelines?

9 A. Yes.

10 Q. In the last deposition, we talked about 10:11
11 whether there were written policies for the various
12 departments regarding approval or denial of special
13 events permits.

14 Do you recall that?

15 A. I do. 10:12

16 Q. Have you identified any other written
17 policies for the approval or denial of special
18 events permits, other than the ones we went over
19 last time?

20 A. There are no other written policies or 10:12
21 procedures.

22 Q. Could you identify any criteria that are
23 not identified in the written policies, criteria
24 for approval or denial?

25 MR. MASTER: I'll just object. Vague and 10:12

1 ambiguous and overbroad.

2 You can answer.

3 THE WITNESS: You are speaking of the
4 special events permit process --

5 MR. ROBINSON: Correct. 10:12

6 THE WITNESS: -- or the film? Okay.

7 The special events. The -- the criteria are on the
8 FAQs and they're on the application. What the city
9 is really looking for is dealing with time, manner
10 and place, essentially, and what -- the criteria 10:13
11 that are listed are the things that we are looking
12 for.

13 BY MR. ROBINSON:

14 Q. So you mentioned time, manner and place.

15 Let's start with time. What are the time 10:13
16 limitations on a special event?

17 A. That would depend on what kind of event is
18 being contemplated. I think I testified to that
19 prior. It really depends on what kind of event is
20 being contemplated. If there is an event at, for 10:13
21 instance, say, 3:00 o'clock in the morning that's
22 going to create a lot of noise, that probably would
23 be a time that we would have some issues with and
24 may want to work with the person who is requesting
25 that event. So time is a -- one of the things that 10:13

1 we would look at.

2 Q. Is there a schedule of hours where special
3 events are allowed?

4 A. I'm not aware of any set schedule of
5 hours.

10:13

6 Q. Are there time limits on the length of
7 time a special event can last?

8 A. I'm not aware of anything that is written
9 about time limits.

10 Q. Are you aware of any unwritten policy
11 about time limits?

10:14

12 A. No. I think it would be up to the City to
13 determine whether or not a permitted event, if it
14 were to be contemplated to go on, let's say,
15 indefinitely, that perhaps there would be some
16 issue with that that we would want to discuss with
17 the permit requester.

10:14

18 Q. Is the appropriate time limit for an event
19 considered on a case-by-case basis?

20 A. Correct.

10:14

21 Q. Let's talk about place. That was the
22 second item. What -- is there any written policy
23 about the place for special events?

24 A. Not specifically about places that are
25 disallowed or allowed, but there are criteria

10:14

1 for -- if you're going to do it in a place that is
2 going to create a traffic hazard, there would need
3 to be mitigation involved. There may be extra
4 insurance that's necessary. So the place is
5 something else that is a criteria that is looked 10:15
6 at, but it's also listed on the application.

7 Q. What places would create a traffic hazard?

8 MR. MASTER: Vague and ambiguous and
9 overbroad.

10 Go ahead. 10:15

11 BY MR. ROBINSON:

12 Q. Let me clarify that. In connection with
13 the place requirements for a special events permit,
14 are there any places within the city that are
15 specifically allowed or disallowed for special 10:15
16 events?

17 MR. MASTER: Objection. Vague and
18 ambiguous and overbroad.

19 Go ahead.

20 THE WITNESS: I believe I've answered 10:15
21 that. I said there is no list of places where it's
22 disallowed or allowed. But it is something --
23 depending on the location that is requested or that
24 is being contemplated, the place does -- does
25 matter when it comes to, you know, the permitting 10:15

1 process.

2 BY MR. ROBINSON:

3 Q. How do you determine at the City of Menlo
4 Park whether a special event creates or could
5 potentially create a traffic hazard? 10:16

6 A. Well, it would be common sense. If the
7 requestee is requesting the special event to occur
8 down El Camino Real or some other major
9 thoroughfare, that's going to create traffic. We
10 historically know what our traffic flows are, which 10:16
11 streets are busier than others and have more
12 traffic issues on them. So it would be based on
13 the location contemplated and, also, our experience
14 with that location.

15 Q. And focusing on the first layers, not the 10:16
16 appellate layers but the first layer of the special
17 event permit process, who decides whether the event
18 creates a traffic hazard?

19 A. Well, that would be a combined opinion
20 with both the public works/transportation 10:16
21 department, public works planning and the police
22 department. And that would be a recommendation
23 back to the community services person, who is in
24 charge of the permitting process, to say these are
25 the issues that we would have with this permit as 10:17

1 it is requested, and we would request some
2 mitigation for those issues.

3 Q. Are there any traffic increases or
4 traffic -- strike that.

5 Is there a particular volume of traffic 10:17
6 interference that would be required to have a
7 permit denied?

8 A. I couldn't answer that question. I have
9 no idea what that -- there's no -- there's no
10 criteria for -- if it's -- that's like saying if 10:17
11 traffic is disrupted 20 percent, it's no good.
12 That doesn't make any sense. I don't know how to
13 answer that.

14 Q. The traffic hazard factor, is that also
15 determined case by case? 10:18

16 A. Well, yes. It would be dependent upon
17 where -- the place that is contemplated in the
18 application.

19 Q. Okay. The last thing you mentioned was
20 manner restrictions. What are manner requirements? 10:18
21 What are the criteria for determining whether the
22 manner of a special event is appropriate?

23 A. Certainly. I think I testified to this a
24 year ago, also.

25 The manner would be, as long as all 10:18

1 applicable laws are being followed, whether they're
2 local, state, federal laws, are being followed. So
3 the manner in which this would occur. Make sure
4 there are safety considerations. If there are --
5 if there's a danger of someone perhaps getting 10:18
6 injured, that there's safety. Then there's
7 sanitation. There are -- there are criteria for
8 that. So that would be the manner criteria.

9 Q. And those criteria that you mentioned,
10 following up with applicable laws, safety 10:19
11 considerations, sanitation considerations, is there
12 a written list of factors anywhere?

13 A. Those are actually --

14 Q. Sorry. Go ahead.

15 THE REPORTER: Excuse me. Excuse me. 10:19

16 MR. ROBINSON: Let me start again.

17 THE REPORTER: Mr. Master, your last
18 statement, I couldn't hear it. And I'm getting
19 interference from Mr. Robinson's line. It's not
20 exactly clear. Go ahead. 10:19

21 BY MR. ROBINSON:

22 Q. Let me rephrase the question.

23 Is there any written list of the manner
24 requirements for a special event permit?

25 A. There are some of the manner requirements 10:20

1 that are reflected in the application dealing with
2 crowd control, sanitation, you know, noise. Those
3 type of manner restrictions are, in fact, on the
4 application process, but it is a case-by-case
5 basis. 10:20

6 Q. So under the general category of safety
7 considerations, would the safety considerations
8 vary based on the type of event?

9 A. Yes.

10 Q. Is there a standard time limit in place 10:20
11 for approval or denial of a special events permit?

12 A. There is a general timeline in place, but,
13 again, as I think I've testified before, that would
14 depend on the specific situation and the specific
15 application that's being contemplated. 10:21

16 Q. Is there any -- is there any mandatory
17 time limit on how long it takes to process a
18 special event application?

19 A. Not that I'm aware of, no.

20 Q. Why don't we mark this as Exhibit 250. 10:21

21 (Plaintiff's Exhibit 250 marked
22 for Identification.)

23 MR. ROBINSON: Does everyone have access to
24 the document share?

25 THE WITNESS: This folder says "empty." 10:21

1 MR. MASTER: Just click on the folder.

2 THE WITNESS: I did.

3 MR. ROBINSON: It's still loading on my
4 end. There we go.

5 For the record, I've marked as Exhibit 250 10:22
6 a multiple-page document.

7 BY MR. ROBINSON:

8 Q. The exhibit tag is covering the Bates
9 number on the first page, but the second page is
10 Bates MP 1939 continuing to MP 1950. Is that 10:22
11 accurate?

12 A. This is Exhibit 250; correct? So it would
13 be 1938 to what?

14 Q. To 1950.

15 A. Yes. 10:23

16 Q. Do you recognize Exhibit 250?

17 A. I recognize it as a filled-out special
18 event application, but I do not recognize the
19 event.

20 Q. So starting on the first page of Exhibit 10:23
21 250, this is the application form that an applicant
22 fills out to get a special event permit?

23 A. Yes.

24 Q. And that carries over onto the next two
25 pages after that? 10:23

Page 248

1 A. Correct.

2 Q. Let's go on to the page that's marked
3 1942. It looks like this is where the applicant
4 signs the permit application?

5 A. That's correct. 10:24

6 Q. All right. I think you've got --

7 THE REPORTER: Mr. Robinson, you cut out.
8 (Telephonic interruption.)

9 MR. ROBINSON: Let's take a two-minute
10 break and I'll dial back in. 10:24

11 THE REPORTER: Thank you.

12 THE VIDEOGRAPHER: Going off the record.
13 The time now is 10:24.

14 (Off the record.)

15 THE VIDEOGRAPHER: Back on the record. 10:39
16 The time now is 10:39.

17 BY MR. ROBINSON:

18 Q. Chief Bertini, before we broke, we were
19 looking at Exhibit 250 and we were on page MP 1942.
20 There's an "Official Use Only" section that's 10:39
21 grayed out at the bottom of the page.

22 Do you see that?

23 A. I do.

24 Q. Is that section filled in by City staff as
25 the application is being processed? 10:39

1 A. That is -- yes, that is filled in by the
2 City staff at community services.

3 Q. Do you see the signature at the bottom
4 there?

5 A. I do. 10:40

6 Q. Is that Matt Milde's signature?

7 A. I couldn't be a hundred percent sure, but
8 it looks like Matt Milde.

9 Q. So in the approval -- under the heading of
10 "Approval" over on the left-hand side, there's a 10:40
11 series of departments: police, planning, et
12 cetera. Do you see that?

13 A. I do.

14 Q. Would whoever the permit coordinator is
15 circulate the application to all of those 10:40
16 departments in the ordinary process?

17 MR. MASTER: Objection. Vague and
18 ambiguous. Overbroad.

19 You can answer.

20 THE WITNESS: Yes. 10:40

21 BY MR. ROBINSON:

22 Q. And would approval be required by each of
23 those departments that were applicable before the
24 permit would be approved?

25 A. Yes. There would be -- every department 10:41

1 would have input into the application, as far as
2 their department and what their -- their concerns
3 or their issues would be.

4 Q. If any of the departments declined to
5 approve the permit, would the permit be rejected in 10:41
6 the ordinary process?

7 A. Not necessarily.

8 Q. In what situations would a department
9 refuse to approve a permit, but it would still be
10 approved? 10:41

11 A. Did you say "department"?

12 Q. A department, correct.

13 A. I think what would happen is, the -- each
14 department would look at the application from its
15 own -- its own function; obviously, the police from 10:41
16 police matters; public works with public works
17 matters, et cetera, and if there was an issue that
18 that department had with the contemplated event,
19 they would go back to Matt Milde, or whoever it was
20 in community services, and explain, well, this is 10:42
21 the issue we have. We would like to ask questions,
22 clarifying questions, or have some kind of
23 mitigation in place for whatever the issue would
24 be.

25 It's hard to just talk about these in -- 10:42

1 you know, without having specific examples.

2 Q. And the clarifications that you would need
3 or the mitigation that you would need would depend
4 on the type of event; correct?

5 A. Correct. 10:42

6 Q. Let's go down to the next section on the
7 left-hand column, "Event Permit Coordinator." Do
8 you see that?

9 A. Below the "Approval" boxes?

10 Q. Correct. 10:43

11 A. Yes.

12 Q. And then below -- beneath that are a
13 series of check boxes. Do you see what I'm talking
14 about?

15 A. I do. 10:43

16 Q. Do those check boxes represent the
17 ordinary steps in the permit process?

18 A. It certainly is what is looked at by staff
19 for the ordinary special event.

20 Q. So, for example, the permit coordinator 10:43
21 would conduct an initial application with you?

22 A. Yes, but I -- this is not -- I'm not quite
23 sure when that happens, whether this is the final
24 approval or -- or this is at the initial. I don't
25 know at which step that would happen. 10:43

1 Q. Got it.

2 But at some point in the process before a
3 permit is approved, all of these steps need to
4 happen; correct?

5 A. Yes. 10:43

6 Q. Let's go on to the page that's marked MP
7 1947.

8 A. Okay.

9 Q. Do you recognize this form?

10 A. I do not. 10:44

11 Q. Have you seen forms in this format at the
12 police department?

13 A. No.

14 Q. So let's go down to MP 1950, the last
15 page. 10:44

16 A. Okay.

17 Q. It looks like this one is -- has the
18 authorized signature of Matthew Ortega. Do you see
19 that?

20 A. I do. 10:45

21 Q. And there's the comment up here: The
22 application is conditionally approved, with a check
23 next to it. And general comments: No police
24 issues.

25 Do you see what I'm referring to? 10:45

1 A. I do.

2 Q. Do you know -- do you have an
3 understanding of what this is specifically with
4 respect to the police department?

5 A. Well, the document speaks for itself, but 10:45
6 it's just not a document that I've used or I'm
7 familiar with.

8 Q. Do you know if any documents of this
9 format were used in connection with Mr. Zeleny's
10 special event permit application? 10:45

11 A. I don't know. As I sit here today, I
12 don't recall.

13 Q. Do you know if the permit application that
14 Michael Zeleny submitted in 2015 was circulated to
15 the various city departments, specifically the 10:45
16 departments listed on MP 1942?

17 A. It is my understanding that the
18 application was, in fact, circulated.

19 Q. How was it circulated?

20 A. I don't know. That would be something 10:46
21 Matt Milde would have to answer.

22 Q. Why do you believe it was circulated?

23 A. Because I know that there was discussion
24 from other departments, also, and the only way they
25 could be aware of the application is if it had been 10:46

1 circulated.

2 Q. How did you become aware of the
3 application?

4 A. It was e-mailed to me via the chief's
5 secretary. 10:46

6 Q. "The chief" meaning the chief of police at
7 the time of the application?

8 A. Chief Bob Johnson. That's correct.

9 Q. Do you have an understanding of why Chief
10 Johnson's secretary circulated it to you? 10:47

11 A. She circulated it to the chief and both
12 commanders, and I was a commander.

13 Q. After you received it, what did you do
14 next?

15 A. I read it. 10:47

16 Q. Okay. And after you read it, what did you
17 do with respect to the permit application?

18 A. I don't -- as I sit here today, I don't
19 remember exactly what I did, but eventually I had a
20 discussion with the chief of police about it. 10:47

21 Q. And what did you discuss with the chief of
22 police?

23 A. I discussed the application and what was
24 being contemplated in the -- in the application.

25 Q. Were there any particular aspects of the 10:47

1 application that you discussed?

2 A. As I sit here today, I don't recall
3 exactly what was discussed. There was an overall
4 discussion about the application.

5 Q. And did the chief at that time give you 10:47
6 any directions about what to do regarding the
7 application?

8 A. The only direction he gave me is to handle
9 it.

10 Q. Okay. What did you do after that with 10:48
11 respect to the application?

12 A. Again, I don't recall exactly what I did
13 after that. I know eventually, I had a discussion
14 with Matt Milde, who was the coordinator at the
15 time, and Sergeant Kaufman, who was a special 10:48
16 events sergeant at the time, to discuss the
17 application.

18 Q. In general terms, what did you talk about
19 with Sergeant Kaufman and Mr. Milde?

20 A. We just discussed what was being 10:48
21 contemplated and how we would go about trying to
22 get the information that we needed and also deal
23 with some of the -- on its face, the application
24 presented some safety concerns, whether it was the
25 traffic safety, public safety. Those are the 10:49

1 things that we discussed.

2 Q. At that time, did you discuss whether the
3 application would be approved or denied?

4 A. No. It was more the due diligence and
5 fact finding, trying to figure out what exactly was 10:49
6 being contemplated. The original application had
7 some parameters in it that didn't seem typical.
8 They were very atypical. So we were -- we were
9 discussing those things, such as the indefinite
10 timeline and what was being asked or contemplated 10:49
11 in the application.

12 Q. What did you do to try to get more
13 information about the application, personally?

14 A. Personally, I didn't do anything.

15 Q. Do you know if anyone at the City of Menlo 10:50
16 Park did anything to try to get more information
17 about the application during the time frame after
18 it was submitted?

19 A. Yes.

20 Q. And what did -- who did something to get 10:50
21 more information?

22 A. I know Matt Milde was trying to get
23 further information, and we also brought in our
24 city's legal counsel, the city attorney's office,
25 and I know that the city attorney attempted to get 10:50

1 further information, also.

2 Q. What did Mr. Milde do, to your
3 knowledge -- strike that.

4 What did Mr. Milde do to try to get more
5 information? 10:50

6 A. I'm not a hundred percent sure, but I know
7 there was some communication back and forth
8 regarding the application.

9 Q. Communication with whom?

10 A. With the city attorney's office and, I 10:51
11 believe, even at one point with Mr. -- the
12 applicant.

13 Q. What additional information, to your
14 knowledge, did Mr. Milde try to get from the city
15 attorney's office? 10:51

16 MR. MASTER: I'm going to object to the
17 extent it calls for him to disclose communications
18 between City staff and the City's attorney. That
19 is attorney-client-privileged communication.

20 MR. ROBINSON: Let me rephrase. 10:51

21 BY MR. ROBINSON:

22 Q. Did the city attorney's office have
23 factual information about the application, other
24 than the information that you and Mr. Milde had?

25 A. I don't quite understand what you're 10:51

1 asking. What factual information are you -- are
2 you saying?

3 Q. Let me ask it a different way.

4 Mr. Milde was trying to get additional
5 information from the city attorney; correct? 10:52

6 A. Correct.

7 Q. Was it your understanding at that time
8 that the city attorney's office had factual
9 information about the application and the intended
10 event that you and Mr. Milde didn't have? 10:52

11 A. Well, what Mr. Milde was looking for is
12 legal advice from our legal counselors regarding
13 some of the things that were contemplated in the
14 permit application.

15 Q. And the other thing you mentioned was, at 10:52
16 some point, the city attorney's office contacted
17 Mr. Zeleny; is that correct?

18 A. Correct.

19 Q. Do you know if that was before or after a
20 decision had been made to deny the application? 10:52

21 A. I don't know when that -- when exactly
22 that was.

23 Q. Do you know if anyone at the City
24 attempted to contact Mr. Zeleny about the
25 application before the decision was made to deny 10:53

1 the application?

2 A. It is my recollection that there was some
3 e-mails asking for clarification, based on the
4 application, from the city attorney's office.

5 Q. Was that before or after the City had made 10:53
6 a decision to deny the permit application?

7 A. I don't know.

8 Q. Let's shift gears a little bit.

9 I'm going to mark -- just give me a second
10 here. 10:53

11 (Plaintiff's Exhibit 251 marked
12 for Identification.)

13 BY MR. ROBINSON:

14 Q. We marked as Exhibit 251 a multiple-page
15 document. The first page has a case caption on it, 10:54
16 and in the right-hand column of the case caption,
17 Defendant Dave Bertini's Second Supplemental
18 Response to Plaintiff's Interrogatories.

19 Do you see that?

20 A. (No response.) 10:55

21 Q. I couldn't hear the answer, Chief Bertini.

22 A. I do.

23 Q. Good. Thank you.

24 Do you recognize this document?

25 A. I do. 10:55

1 Q. If you could please turn to the page that
2 has the caption "Verification," near the very end
3 of the document.

4 A. Okay.

5 Q. Is that your signature? 10:55

6 A. It is.

7 Q. You reviewed this document before you
8 signed it?

9 A. I did.

10 Q. Let's go to page 3, please. Actually, 10:55
11 let's start on page 2 and carrying over to page 3.
12 There's interrogatory No. 1 and supplemental
13 response to interrogatory No. 1. Read those, if
14 you would.

15 A. (Witness complying.) 10:56

16 Q. I want to focus on the paragraph that
17 starts: "In addition, the City has recently
18 discovered." Do you see that?

19 A. I do.

20 Q. How did the City discover that it never 10:56
21 had legal authority to issue a permit?

22 A. I'm not -- I'm not 100 percent sure. My
23 understanding, from discussions with the city
24 attorney's office --

25 MR. MASTER: Hold on. If they're 10:56

1 discussions with the city attorney's office, then
2 it's attorney-client-privileged communication. If
3 you have any understanding outside of what you've
4 been told by an attorney, you're certainly entitled
5 to answer. 10:57

6 THE WITNESS: Then I have no -- nothing
7 else, aside from what I was discussing with the
8 city attorney.

9 BY MR. ROBINSON:

10 Q. All right. Let's -- taking that paragraph 10:57
11 as a whole that discusses the City's legal
12 authority and ownership of the median, do you have
13 any basis for knowledge about that -- the
14 information in that paragraph, other than what
15 you've been told by an attorney? 10:57

16 A. No.

17 Q. For purposes of our record, Chief Bertini,
18 what were you told by an attorney concerning that
19 information?

20 MR. MASTER: Again, just for the record, 10:57
21 you're asking Chief Bertini to disclose what he was
22 told by the city attorney's office, the city
23 attorney being the attorney for the City and the
24 staff. Therefore, it calls for him to disclose
25 attorney-client-privileged communications, and I'll 10:58

1 instruct him not to answer.

2 MR. ROBINSON: I didn't quite hear you,

3 Todd. Are you instructing him not to answer?

4 MR. MASTER: Yes.

5 BY MR. ROBINSON:

10:58

6 Q. Chief Bertini, are you going to follow

7 your attorney's instruction not to answer?

8 A. I am.

9 Q. As the chief of police of the City of
10 Menlo Park, are Menlo Park police officers 10:58
11 authorized to enforce the laws on that median strip
12 on Sand Hill Road?

13 A. Yes.

14 Q. Does the city police department have
15 jurisdiction over the median strip on Sand Hill 10:58
16 Road?

17 MR. MASTER: Objection. Calls for a legal
18 conclusion. Vague and ambiguous.

19 You can answer.

20 THE WITNESS: The City of Menlo Park has 10:59
21 jurisdictional boundaries, but to be technical with
22 you, Counselor, police officers in the state of
23 California can actually use their police power
24 anywhere in the state. So, yes, they have police
25 power over that median. 10:59

1 BY MR. ROBINSON:

2 Q. If Mr. Zeleny goes out and protests on the
3 median strip on Sand Hill Road with unloaded
4 firearms, is he subject to arrest by the Menlo Park
5 Police Department? 10:59

6 MR. MASTER: Objection. Vague and
7 ambiguous and overbroad. Incomplete hypothetical.
8 Calls for a legal conclusion.

9 Go ahead.

10 THE WITNESS: The situation would be 10:59
11 assessed by whatever law enforcement entity was
12 called, whether it was the Menlo Park Police
13 Department, the CHP, the California Highway Patrol,
14 or the San Mateo County Sheriff's Office. And an
15 assessment would be made, and if there was probable 10:59
16 cause to make an arrest, then an arrest could be
17 made.

18 BY MR. ROBINSON:

19 Q. If the City of Menlo Park Police
20 Department were called and went to the median strip 11:00
21 on Sand Hill Road that's referenced in your
22 interrogatory response and observed Mr. Zeleny
23 openly carrying an unloaded firearm as part of a
24 protest, would he be subject to arrest?

25 A. As I stated, any agency -- any police 11:00

1 agency would be able to assess the situation, and
2 if probable cause was present to make an arrest, an
3 arrest could be made.

4 Q. The median strip that's referred to in
5 your response to interrogatory No. 1, it's within 11:00
6 the city limits of Menlo Park; correct?

7 A. That is my understanding.

8 Q. Let me go ahead and mark as Exhibit 252 --
9 (Plaintiff's Exhibit 252 marked
10 for Identification.)

11 BY MR. ROBINSON:

12 Q. For the record, Exhibit 252 is a
13 multiple-page document. It looks like it starts at
14 MP 6656 and carries through to MP 6673; is that
15 correct? 11:01

16 A. It's still loading up on my computer.
17 Exhibit 252?

18 Q. Correct.

19 A. And what were the numbers you said it went
20 from? 11:02

21 Q. MP 6656 through -- I'm sorry. Let me
22 start that again. MP 6656 through MP 6673.

23 A. Okay. I have it now.

24 Q. Do you recognize this?

25 A. I do not. 11:02

1 Q. Have you seen any documents relating to
2 the ownership of that median strip?

3 A. No.

4 Q. Let's mark another one.

5 Are you familiar with an entertainment 11:03
6 firearms permit issued by the State of California?

7 MR. MASTER: Objection. Vague and
8 ambiguous as to "familiar."

9 Go ahead.

10 THE WITNESS: Are you speaking of a 11:03
11 specific one or are you speaking --

12 BY MR. ROBINSON:

13 Q. In general, do you know what that is?

14 A. I do now, yes.

15 Q. What is it, in your understanding? 11:03

16 A. My understanding, through a conversation
17 with the California Department of Justice, the
18 entertainment firearms permit is a permit that is
19 given to a prop master, who is able to then loan
20 weapons, live weapons, real weapons, that would be 11:04
21 subject to the DOJ's jurisdiction, to actors and/or
22 participants in a motion picture or entertainment
23 event.

24 Q. If Mr. Zeleny -- you're aware that at some
25 point, Mr. Zeleny had an entertainment firearms 11:04

1 permit; correct?

2 A. That's correct.

3 Q. If Mr. Zeleny renewed his entertainment
4 firearms permit, would he be allowed to protest on
5 that median strip with unloaded firearms without 11:04
6 being subject to arrest by the City of Menlo Park?

7 MR. MASTER: Object. The question is
8 compound and vague and ambiguous and overbroad.
9 It's an incomplete hypothetical. Calls for a legal
10 conclusion and speculation. 11:04

11 With all that being said, if you can
12 answer, go ahead.

13 THE WITNESS: My understanding, from my
14 discussion with the representative from the
15 Department of Justice, that permit only allows a 11:05
16 prop master to loan a live firearm to someone. It
17 does not give any other ability to use and/or -- or
18 get -- or be permitted to carry a loaded firearm
19 during a protest event. That was my understanding
20 from the Department of Justice. 11:05

21 BY MR. ROBINSON:

22 Q. Who did you speak to at the Department of
23 Justice about that?

24 A. I spoke to several people, but I don't
25 recall the name of the -- I think it was a 11:05

1 woman who eventually gave me that information over
2 the phone.

3 Q. Was it Eileen McKee? Is that the name of
4 the person?

5 A. Yeah, that name sounds very familiar. So 11:05
6 it could have been her.

7 Q. And so the communication relayed from DOJ,
8 the Department of Justice, was that the
9 entertainment firearms permit only allows a person
10 to loan firearms to someone as a prop master; is 11:06
11 that correct?

12 A. That was my understanding from the
13 Department of Justice, yes.

14 Q. So the permit would not allow someone to
15 carry unloaded firearms during a protest; correct? 11:06

16 A. Correct. She told me that was beyond the
17 scope of this permit.

18 Q. Let's go ahead and mark another one.

19 Was that discussion with DOJ in connection
20 with Mr. Zeleny's special event permit application? 11:07

21 A. Was -- that discussion was had when it was
22 presented the first time, the entertainment
23 firearms permit was presented, and I was unfamiliar
24 with the permit, so I called the DOJ to get
25 clarification. 11:07

1 Q. The permit was presented by Mr. Zeleny in
2 connection with his permit application; correct?

3 A. No. My understanding was it was during
4 the appeal of the denial during the city manager's
5 care. So, yes, it was -- it was connected to the 11:07
6 permit.

7 Q. So Mr. Zeleny submitted the entertainment
8 firearms permit in that appeal process, and you
9 contacted DOJ to get more information about it?

10 A. That's correct. 11:07

11 Q. And the information DOJ provided you, in
12 substance, was it doesn't apply to this situation;
13 correct?

14 A. That's correct.

15 Q. Did that document load on your screen, 11:08
16 Chief Bertini?

17 A. 253?

18 Q. 253, correct.

19 A. Yes.

20 (Plaintiff's Exhibit 253 marked
21 for Identification.)

22 BY MR. ROBINSON:

23 Q. So we've marked as Exhibit 253 a series of
24 pages that appear to be text messages, and they're
25 Bates marked MP 6683, which is covered by the 11:08

1 exhibit stamp, through MP 6688; correct?

2 A. Correct.

3 Q. These texts or text messages are between
4 you and Sergeant Kaufman; correct?

5 A. Let me scroll through them. Yes. 11:08

6 Q. Sergeant Kaufman is no longer with the
7 Menlo Park Police Department; correct?

8 A. As of the day of this text, she was
9 retired.

10 Q. Is she back at the department now? 11:09

11 A. No. She's a reserve officer, but I
12 haven't seen her in a year.

13 Q. If you look at the first and second page
14 of Exhibit 253, there's a white -- it looks like a
15 large three-ring binder. Do you see that? 11:09

16 A. I do.

17 Q. With a picture of Mr. Zeleny on the cover
18 and "Michael Zeleny & Associates"?

19 A. I see that.

20 Q. The last time, we talked about what was 11:09
21 referred to as your "Zeleny file." Do you recall
22 that?

23 A. Yes.

24 Q. Is this three-ring binder that we're
25 looking at in Exhibit 253 your Zeleny file? 11:10

1 A. No.

2 Q. What is this three-ring binder?

3 A. This is a binder of

4 law-enforcement-sensitive information that was

5 given to me when I came to Menlo Park around 2011, 11:10
6 2012.

7 Q. What's contained in that binder? What is
8 the substance of the information?

9 A. Law-enforcement-sensitive information that
10 we have obtained from other law enforcement 11:10
11 agencies regarding Mr. Zeleny.

12 MR. ROBINSON: Has the information in that
13 binder been produced in this case?

14 MR. MASTER: I believe it has. This was
15 the subject of the motion and I believe the subject 11:10
16 of a protective order. It's been produced with
17 confidential Bates numbers, is my recollection.

18 MR. ROBINSON: So I'm looking specifically
19 at the "Post-Aurora, Colorado Briefing,"
20 San Francisco, and I don't believe that's been 11:11
21 produced. But we can certainly verify.

22 BY MR. ROBINSON:

23 Q. Why don't we do this: Chief Bertini, has
24 this binder been provided to whoever was collecting
25 documents for the City in connection with the case? 11:11

1 MR. MASTER: Did you do that in my office?

2 THE WITNESS: Yes. Yeah.

3 BY MR. ROBINSON:

4 Q. And you have -- separately from this
5 three-ring binder, you have your Zeleny file; 11:11
6 correct?

7 A. That's correct.

8 Q. And the Zeleny file is a set of materials
9 that you collected over the course of your work
10 with the Menlo Park Police Department? 11:11

11 A. That's correct.

12 Q. Why do you maintain a binder of law
13 enforcement sensitive information about Mr. Zeleny?

14 A. Are you speaking of my specific file or
15 this white binder we're looking at? 11:12

16 Q. Let's start with this white binder. Do
17 you still have the white binder?

18 A. It is in the office at the police
19 department.

20 Q. Why does the police department maintain a 11:12
21 binder of law enforcement sensitive information
22 about Mr. Zeleny?

23 A. The police department, in the course of
24 doing police work, sometimes will get information
25 from other law enforcement sources that is historic 11:12

1 information, that is good information to keep.

2 Certainly this binder that deals with
3 Mr. Zeleny is not the only binder or documents that
4 police departments keep for historical data and/or
5 for ready reference depending on the situation. 11:13

6 Q. Do you have any other similar binders of
7 law enforcement sensitive information about other
8 protesters?

9 A. Yes.

10 Q. Which other protesters? 11:13

11 MR. MASTER: Objection. How is that
12 relevant? And it goes to invasion of privacy. I'm
13 not sure how it's relevant. Invades privacy of
14 third parties.

15 BY MR. ROBINSON: 11:13

16 Q. Chief Bertini, you can go ahead and answer
17 the question unless you're instructed not to.

18 MR. MASTER: Well, I'm going to instruct
19 him not to answer that question, Damion, because it
20 goes to third parties that are not pertinent or 11:13
21 relevant to this litigation.

22 You can ask him if they are, but,
23 otherwise, I'm going to instruct him not to answer
24 that because it goes to the official information
25 privilege, the legal law and motion privilege and

1 the designation privilege.

2 BY MR. ROBINSON:

3 Q. Chief Bertini, I'm not asking you about
4 the content of any of your materials. All I'm
5 asking is, do you have -- which other protesters do 11:14
6 you maintain binders about?

7 MR. MASTER: Well, it's the same
8 objection, Damion, because you're asking him to
9 identify individuals by name. So you can ask him
10 for approximate numbers, something like that, but 11:14
11 if you're identifying third parties, we are, by its
12 very nature, violating those privileges that I
13 mentioned before.

14 MR. ROBINSON: I'm not going to argue the
15 issue with you. You can either instruct or don't 11:14
16 instruct, and we'll reserve our rights.

17 MR. MASTER: Okay. I'm instructing him
18 not to answer that.

19 BY MR. ROBINSON:

20 Q. Chief Bertini, are you going to follow 11:14
21 your counsel's instruction not to answer?

22 A. Yes.

23 Q. How many binders does the City of Menlo
24 Park -- strike that.

25 How many binders or other files does the 11:14

1 City of Menlo Park maintain on protesters?

2 A. I can't speak to other -- other commanders
3 or other, you know, folks who work in detectives,
4 but I know for a fact that I, personally, have
5 maybe three or four different files on prospective 11:15
6 protests.

7 You may be aware, in the last couple of
8 months, we've had a lot of protests in the region
9 and in the United States, and some of those we
10 needed to deal with as they became violent. So we 11:15
11 would have these ready-reference files for either
12 protests that are coming up or protests that have
13 happened.

14 Q. How did the City of Menlo Park deal with
15 the recent protest that became violent? 11:15

16 A. We staffed up the police department, and
17 we answered calls for mutual aid from the county
18 and the region. We dispatched officers to
19 different cities, along with the mobile field
20 force, that were needed for some of these protests. 11:16

21 The protests that actually came into the
22 city of Menlo Park, we had police officers
23 monitoring them to make sure that there was no --
24 no outside agitators or violence that was
25 occurring, and we assisted them in transiting 11:16

1 through the city of Menlo Park and allowed them to
2 carry out their First Amendment rights to protest,
3 as long as they were not committing any criminal
4 acts.

5 Q. When they transited through Menlo Park, 11:16
6 were they blocking the street?

7 A. In some cases, they were in the street,
8 and in other cases, they were on the sidewalk.

9 Q. And were they allowed to transit Menlo
10 Park on the street? 11:16

11 A. Yes. If there was a large number of them
12 and they couldn't fit on the sidewalk, then they
13 were, in fact, marching in the street.

14 MR. MASTER: Damion, we've been going for
15 a little over an hour. Can we take a five-minute 11:17
16 break?

17 MR. ROBINSON: Sure. That's fine.

18 MR. MASTER: Thank you.

19 THE VIDEOGRAPHER: Going off the record.
20 The time now is 11:17. 11:17

21 (Off the record.)

22 THE VIDEOGRAPHER: Back on the record.

23 The time now is 11:29.

24 BY MR. ROBINSON:

25 Q. Chief Bertini, we're back on the record. 11:29

1 You understand you're still under oath; right?

2 A. I do.

3 Q. Let's flip in that same exhibit to MP

4 6687. There's a page entitled "Post-Aurora,

5 Colorado Briefing, San Francisco." Do you see 11:29

6 that?

7 A. I do.

8 Q. Is that included in that white three-ring

9 binder regarding Mr. Zeleny?

10 A. It is. 11:29

11 (Page 278 through page 286 are

12 marked confidential and are

13 bound under separate cover. The

14 non-confidential portion of this

15 transcript continues on page 287.)

16

17

18

19

20

21

22

23

24

25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---000---

MICHAEL ZELENY,

Plaintiff,

vs.

Case No. CV 17-7357 JCS

GAVIN NEWSOM, et al.,

Defendants.

_____/

CONFIDENTIAL

CONTINUED VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

BY VIDEOCONFERENCE

(Volume II - Pages 278 to 286)

Taken before DENISE M. LOMBARDO, CSR No. 5419

RPR, RMR, RDR, CRR

August 7, 2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGE

EXAMINATION BY MR. ROBINSON

282

1 CONTINUED VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

2
3 BE IT REMEMBERED, that pursuant to Notice,
4 and on the 7th day of August 2020, commencing at
5 the hour of 10:05 a.m., before me, DENISE M.

6 LOMBARDO, a Certified Shorthand Reporter, appeared
7 by videoconference CHIEF DAVE BERTINI, produced as
8 a witness in said action, and being by me first
9 duly sworn, was thereupon examined as a witness in
10 said cause.

11
12 ---o0o---

13
14 APPEARANCES:

15
16 Appearing on behalf of the Plaintiff:

17 DAMION ROBINSON (by Zoom)

18 DAVID MARKEVITCH (by Zoom)

19 Affeld Grivakes LLP

20 2049 Century Park East, Suite 2460

21 Los Angeles, California 90067

22 (310) 979-8700
23
24
25

1 Appearing on behalf of the Defendant City of Menlo
2 Park; and the Deponent, Chief Dave Bertini:

3 TODD H. MASTER (by Zoom)
4 Howard, Rome, Martin & Ridley LLP
5 1900 O'Farrell Street, Suite 280
6 San Mateo, California 94403
7 (650) 365-7715
8 tmaster@hrmrlaw.com

9
10 Appearing on behalf of the Defendant Attorney
11 General Xavier Becerra:

12 JOHN W. KILLEEN (by Zoom)
13 Deputy Attorney General
14 Office of the Attorney General
15 (916) 210-6045
16 john.killeen@doj.ca.gov

17
18 ALSO PRESENT:

19 Ted Hoppe, Videographer (by Zoom)
20 Veritext Legal Solutions

21
22 Michael Zeleny (by Zoom)

1 CHIEF DAVE BERTINI,
2 called as a witness,
3 testified as follows:

4 EXAMINATION BY MR. ROBINSON:

5 Q. What is the content of that document? 11:29
6 What's it about?

7 MR. MASTER: Counsel, I believe this was
8 the discussion that we had previously and was
9 subject to court order concerning the official
10 information privilege. I recall the Court did 11:30
11 order us to produce the documents. We did. But
12 they were pursuant to protective order, which I
13 believe is still in place.

14 You can certainly answer those questions,
15 but I request that we seal this portion of the 11:30
16 deposition in conjunction with that protective
17 order, if you want to get into that.

18 MR. ROBINSON: That's fine. Let's seal
19 this portion. We can mark it confidential.

20 BY MR. ROBINSON: 11:30

21 Q. What is that document about?

22 A. My only knowledge of the document is what
23 I actually saw in it. I did not attend this
24 briefing and I'm not sure who did, but it was the
25 PowerPoint from a briefing that was done regarding 11:30

1 the Aurora, Colorado, shooting.

2 Q. Did the briefing relate to Mr. Zeleny?

3 A. I wasn't at the briefing. I don't know.

4 Q. Does the PowerPoint relate to Mr. Zeleny?

5 A. I don't recall if Mr. Zeleny was mentioned 11:31
6 in the PowerPoint. I don't believe so.

7 Q. Do you recall, either from discussion --
8 strike that.

9 Do you know if the Stanford professor came
10 into the department to talk about Mr. Zeleny, as 11:31
11 referenced in Sergeant Kaufman's text message to
12 you?

13 A. Not while I was employed there.

14 Q. As the designated representative of the
15 City of Menlo Park, do you know if that happened? 11:31

16 A. I do not.

17 Q. Does the City of Menlo Park have a profile
18 on Mr. Zeleny?

19 A. I'm not sure what that means.

20 Q. So Sergeant Kaufman's text message refers 11:32
21 to a profile comparison. Do you see that?

22 A. I do.

23 Q. What is a profile comparison?

24 A. I have no idea what she meant by that.

25 Q. Did you ask her? 11:32

1 A. I did not.

2 Q. Have you had any discussions with Sergeant
3 Kaufman about this case, other than the text
4 messages that we're looking at?

5 A. No. 11:32

6 Q. I'm going to go ahead and mark --
7 Are we up to 254 now?

8 THE REPORTER: Yes.

9 MR. MASTER: Damion, are we still on seal
10 here? 11:33

11 MR. ROBINSON: No. Let's go off the
12 sealed record.

13 (This ends the confidential portion
14 of the transcript. The deposition
15 continues on page 287.) 11:33

16

17

18

19

20

21

22

23

24

25

I, the undersigned, CHIEF DAVE BERTINI, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

[illegible]

Date

REPORTER'S CERTIFICATE

I, DENISE M. LOMBARDO, do hereby certify:

That CHIEF DAVE BERTINI, in the foregoing deposition named, was present by videoconference and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken before me at said time and place, and was taken down in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings that took place;

And that the aforementioned 9-page transcript meets the California minimum transcript format standards.

IN WITNESS WHEREOF, I have hereunder subscribed my hand this day 3rd of September 2020.

Denise M. Lombardo

DENISE M. LOMBARDO, CSR No. 5419
State of California

1 (Plaintiff's Exhibit 254 marked
2 for Identification.)
3 BY MR. ROBINSON:
4 Q. I've gone ahead and marked as Exhibit 254
5 a multiple-page document from MP 5382 through MP 11:33
6 5388. Do you see that?
7 A. Yes.
8 Q. Do you recognize Exhibit 254?
9 A. I only recognize it as a memorandum from
10 inside the Menlo Park Police Department prior to 11:33
11 when I was employed.
12 Q. Is this one of the documents that was
13 produced by the City of Menlo Park in discovery?
14 A. Yes.
15 Q. Is it -- first of all, it's a memorandum 11:33
16 about California open carry; correct?
17 A. That is the subject matter on the memo,
18 yes.
19 Q. During the period of time that open carry
20 had not been prohibited by California law, was this 11:34
21 the department of -- the Menlo Park Police
22 Department's policy on open carry?
23 A. I cannot definitely answer that. To me,
24 it looks like it was information that was given to
25 the department, but it was by a sergeant. 11:34

1 Normally, policy is made by either a chief or a
2 command staff member.

3 Q. Was it the policy of the City of Menlo
4 Park, before open carry was prohibited by
5 California law, that individuals had a 11:34
6 constitutional right to openly carry unloaded
7 firearms?

8 A. That's correct.

9 Q. Before the open-carry ban, was it the
10 position of the City of Menlo Park that Mr. Zeleny 11:34
11 had a constitutional right to openly carry
12 firearms?

13 A. Yes.

14 Q. In openly carrying firearms in connection
15 with Mr. Zeleny's protest before the open-carry 11:35
16 ban, was he exercising his constitutional rights?

17 A. Yes.

18 Q. Was he doing anything illegal?

19 MR. MASTER: Objection. Vague and
20 ambiguous as to time. Lacks foundation. Calls for 11:35
21 speculation.

22 You can answer.

23 THE WITNESS: I couldn't answer whether he
24 was doing anything illegal. He was never arrested;
25 I know that. There was a case that was sent to the 11:35

1 district attorney's office regarding a holstered
2 weapon that was possibly concealed.

3 BY MR. ROBINSON:

4 Q. Other than the one incident where he was
5 carrying the holstered weapon that was possibly 11:35
6 concealed, are you aware of anything else that
7 Mr. Zeleny did in the course of his protest in
8 Menlo Park that was illegal?

9 A. I answered that. I wasn't there. I don't
10 know what he did during his protest. What I can 11:36
11 tell you is that we never arrested him.

12 Q. Were officers in the Menlo Park Police
13 Department on site during Mr. Zeleny's protest?

14 A. In some protests, yes, they were.

15 Q. During a protest where Mr. Zeleny was 11:36
16 carrying unloaded firearms, were there police on
17 site the entire time?

18 A. I don't recall whether they were there the
19 entire time, but I know that when we were notified
20 he was there, officers did respond at least 11:36
21 initially.

22 Q. Did -- aside from the incident, the one
23 incident where there was a firearm in a holster
24 that could be considered concealed, did officers
25 that observed Mr. Zeleny's protest ever report that 11:36

1 he had committed a crime?

2 A. As I've stated, Counselor, we never
3 arrested him for a crime.

4 Q. Did the officers ever report that a crime
5 had occurred? 11:37

6 A. No.

7 Q. Do you recall the officers reporting on
8 multiple occasions that no crime had occurred?

9 A. I'm not sure they used those words, so I
10 would say no. 11:37

11 Q. Do you recall officers reporting on
12 various occasions that Mr. Zeleny was cooperative?

13 A. That, I recall, yes.

14 Q. Was Mr. Zeleny cooperative consistently
15 during his protest until the time that he was 11:37
16 prosecuted?

17 A. From my understanding, based on what the
18 officers reported, yes.

19 Q. Let's go ahead and mark another exhibit.
20 So this one has been previously marked. So I'm 11:38
21 just going to move it to the "Marked Exhibits"
22 folder.

23 Chief Bertini, could you open up in the
24 "Marked Exhibits" folder -- the file name is
25 101004 - Police Report - Cooperation. It's a 11:38

1 document that has previously been marked as Exhibit
2 47.

3 Do you have that one open in front of you?

4 A. I do.

5 Q. Is this a police report generated by the 11:39
6 Menlo Park Police Department?

7 A. It is, prior to my employment with the
8 Menlo Park Police Department.

9 Q. This is the format of the police
10 department -- police report from Menlo Park; right? 11:39

11 A. Correct.

12 Q. Are these police reports filled out by
13 officers either contemporaneously or soon after the
14 events covered by the police report?

15 A. Yes. 11:39

16 Q. Are they based on personal observation by
17 the officers?

18 A. Yes.

19 Q. Are they kept in the ordinary course of
20 business? 11:39

21 A. Correct.

22 Q. Is it part of the regular practice of the
23 Menlo Park Police Department to keep these types of
24 police reports?

25 A. That is correct. 11:39

1 Q. Is that true of all of the police reports
2 that were produced in connection with this case?

3 A. Is it correct that they were all kept in
4 the normal course of business? Is that the
5 question? 11:40

6 Q. Right.

7 A. The answer is yes. Yes.

8 Q. You mentioned last time in your deposition
9 that Mr. Zeleny was a safety concern. Do you
10 recall saying that? 11:40

11 A. I do.

12 Q. Why is Mr. Zeleny a safety concern?

13 A. Because when he would be protesting,
14 openly carrying numerous firearms with fully loaded
15 magazines that had rounds in them, it would only 11:40
16 take a split second for him to load one of those
17 weapons and become an active shooter.

18 Q. Did Mr. Zeleny ever do anything, to your
19 knowledge, that indicated that he had any intention
20 of loading the weapons? 11:40

21 A. Aside from having thousands of rounds and
22 fully loaded magazines next to the weapons, no.

23 Q. Did Mr. Zeleny ever do anything, to your
24 knowledge, to indicate that he intended to shoot
25 anyone with the weapons? 11:41

1 A. I -- not to my recollection. I know there
2 were some statements that he made that had the air
3 of possibly being angry and having -- and making a
4 threat, but as I sit here today, I can't recall
5 specifically. 11:41

6 Q. Can you estimate how many times Mr. Zeleny
7 protested in Menlo Park, during your tenure there,
8 with unloaded weapons?

9 A. I would estimate approximately 10, 10 to
10 15. 11:41

11 Q. And that was over the course of a couple
12 of years; right?

13 A. Correct.

14 Q. During those 10 or 15 protests over the
15 course of a couple of years, was Mr. Zeleny ever 11:42
16 violent?

17 A. Not that I'm aware of.

18 Q. Did he ever threaten anyone during the
19 protest?

20 A. Aside from the statements that I just made 11:42
21 about some statements that were made in -- either
22 angry or threatening in some way, no.

23 Q. When you refer to statements that were
24 angry or threatening in some way, what are you
25 referring to? What were the statements? 11:42

1 A. As I sit here today, I don't recall
2 exactly what they were, but I do recall getting
3 information, and I don't remember from whom it was,
4 but there were -- my recollection is that they were
5 posts on some social media site that indicated some 11:42
6 kind of anger and even somewhat of a threatening
7 tone.

8 Q. Aside from indicating some kind of anger
9 and a threatening tone, do you recall anything else
10 about these statements that Mr. Zeleny made? 11:42

11 A. Other than what I just said, no.

12 Q. Did you get the statements from NEA?

13 A. As I sit here today, I don't recall who I
14 got them from, whether they were from law
15 enforcement, from an outside entity, or from my own 11:43
16 police department. I don't recall.

17 Q. You do recall getting some social media
18 content from NEA, correct, about Mr. Zeleny?

19 A. I believe we did receive some content from
20 NEA regarding the possibility of him coming back to 11:43
21 the site to protest.

22 Q. You recall NEA conducting public source
23 surveillance on Mr. Zeleny; right?

24 A. Yes.

25 Q. And NEA, from time to time, would send you 11:43

1 the results of their public source surveillance of
2 Mr. Zeleny; correct?

3 A. Yes.

4 Q. You were aware that NEA was also
5 conducting physical surveillance of Mr. Zeleny at 11:44
6 the time; correct?

7 A. I don't recall exactly whether they were
8 doing physical surveillance or not. I don't
9 recall.

10 Q. Do you recall NEA reporting to you about 11:44
11 Mr. Zeleny's whereabouts?

12 A. Yes.

13 Q. Do you recall NEA reporting to you at
14 certain times that Mr. Zeleny was still in
15 Los Angeles? 11:44

16 A. Yes.

17 Q. During some of the anticipated protest
18 dates, NEA reported to you that Mr. Zeleny was seen
19 still in Los Angeles at the time; correct?

20 A. I don't recall them saying he was seen, 11:44
21 and I don't know whether they were physically
22 surveilling him or just based on his posts. I
23 don't know how they knew he was still there.

24 Q. They did provide information to you,
25 though, that Mr. Zeleny was still in Los Angeles; 11:44

1 correct?

2 A. I do remember them providing that
3 information to us, yes.

4 Q. And they also provided you information
5 about Mr. Zeleny's mother passing away. Do you 11:45
6 recall that?

7 A. I recall receiving that information. I
8 just don't recall, without producing the e-mail,
9 who it came from.

10 Q. Do you know why NEA was conducting 11:45
11 surveillance on Mr. Zeleny?

12 A. From my understanding, in speaking to
13 Mr. Tresmontan, they were concerned for the safety
14 of their staff.

15 Q. When Mr. Zeleny would protest, every time 11:45
16 he would do that, it would require some police
17 officers to respond; correct?

18 A. I would object to the word "require." I
19 mean, if somebody called the police about an armed
20 person, we would have, of course, dispatched 11:45
21 officers. And once they determined it was
22 Mr. Zeleny, then, you know, they would assess the
23 situation.

24 Q. And officers did respond every time that
25 someone reported Mr. Zeleny was protesting with 11:46

1 firearms; correct?

2 A. I believe they responded every time there
3 was a call of a man with a gun or a person with
4 guns. I'm not sure if he was actually identified
5 by these reporting parties. 11:46

6 Q. When Mr. Zeleny was protesting with the
7 guns, what was the volume of calls that the City
8 would receive about that?

9 MR. MASTER: I'm going to object. The
10 question is vague, ambiguous and overbroad. 11:46

11 Go ahead.

12 THE WITNESS: I don't know. I don't
13 recall, nor if I ever knew how many calls each
14 incident produced.

15 BY MR. ROBINSON: 11:46

16 Q. Was it generally more than one call?

17 A. I don't know.

18 Q. Was it more than a hundred calls?

19 A. I don't know.

20 Q. Do you recall any incident where 11:46
21 Mr. Zeleny's protest prompted more than a hundred
22 calls to the police department?

23 A. I don't know.

24 Q. Can you recall any incident where his
25 protest prompted more than one call to the police 11:47

1 department?

2 A. I don't know.

3 Q. Do you have an estimate about the cost of
4 police officers responding to Mr. Zeleny's protest?

5 A. I do not. 11:47

6 Q. So I've introduced Exhibit 255.

7 (Plaintiff's Exhibit 255 marked
8 for Identification.)

9 BY MR. ROBINSON:

10 Q. For the record, Exhibit 255 is two pages, 11:48
11 Bates numbered MP 51 and 52; correct?

12 A. Correct.

13 Q. It's a series of e-mails, starting with an
14 e-mail from Mr. Zeleny to various people, an e-mail
15 from Sharon Kaufman to Burt Lacey and Jaime Romero 11:48
16 and then a reply; is that correct?

17 A. Jaime, Jaime Romero. But, yes.

18 Q. Got it.

19 Was Sergeant Kaufman -- in September 2011,
20 was Sergeant Kaufman a commander in the -- oh, she 11:48
21 was a sergeant at the time; correct?

22 A. So this -- yes. This occurred prior --
23 like a week or two prior to me coming to work in
24 Menlo Park. At the time, Jaime Romero was an
25 acting commander, and that's the position I took 11:49

1 when I got hired. And so the acting commander,
2 Jaime Romero, was speaking to Sergeant Sharon
3 Kaufman.

4 Q. Did Sergeant Kaufman report to you after
5 you became the commander? 11:49

6 A. As I recall, yes. She was the special
7 events sergeant. So, yes, she would have reported
8 to me as the patrol commander.

9 Q. Would Sergeant Kaufman -- before you
10 started at the City of Menlo Park, was Sergeant 11:49
11 Kaufman -- strike that.

12 At the time you started, was Sergeant
13 Kaufman the primary person at the City of Menlo
14 Park who dealt with Michael Zeleny?

15 A. I believe, in essence, yes, because it had 11:49
16 to do with special events, and that was the purview
17 of the special events sergeant. So anything out of
18 the ordinary of regular patrol would be dealt with
19 by the special events sergeant.

20 Q. In her e-mail, Sergeant Kaufman -- to 11:50
21 Mr. Lacey and Mr. Romero, Sergeant Kaufman says,
22 The celebration was short-lived.

23 Do you see that?

24 A. I do.

25 Q. Do you recall Sergeant Kaufman ever 11:50

1 expressing to you that she wished Zeleny would stop
2 coming out and protesting?

3 A. I don't recall that.

4 Q. Do you recall her ever complaining about
5 Mr. Zeleny's protests? 11:50

6 A. Not that I recall.

7 Q. Do you recall any communications from
8 Sergeant Kaufman about finding a way to stop
9 Mr. Zeleny's protests?

10 A. As I sit here today, I don't recall. 11:50

11 Q. Do you recall ever discussing with anyone
12 in Menlo Park the displeasure with the fact that
13 Mr. Zeleny was protesting with firearms?

14 A. Not necessarily displeasure. It was a
15 discussion at police management staff meetings, 11:51
16 which I know we've discussed in the past, where
17 Mr. Zeleny was brought up, that it was a public
18 safety concern and that it was a drain on our
19 resources whenever he would come and protest.

20 Q. So being a drain on the resources, was it 11:51
21 expressed at those meetings or any other time that
22 it would be preferable if Mr. Zeleny were no longer
23 protesting?

24 A. I don't recall that specifically being
25 said by anybody. 11:51

1 Q. Do you recall anyone saying that they
2 wished Mr. Zeleny would stop protesting, or words
3 to that effect?

4 A. I don't recall specifically that, no.

5 Q. Let's mark as the next in order -- so I'm 11:51
6 marking Exhibit 256.

7 (Plaintiff's Exhibit 256 marked
8 for Identification.)

9 BY MR. ROBINSON:

10 Q. For the record, it's two pages, MP 5380 to 11:52
11 5381.

12 Do you see that?

13 A. Yes.

14 Q. Do you recognize this document?

15 A. I don't see it yet. I recognize it as an 11:52
16 e-mail.

17 Q. Is it an e-mail that Bryan Roberts sent to
18 you?

19 A. Yes. Bryan Roberts was the police chief
20 at the time. 11:53

21 Q. Do you have an understanding of why Chief
22 Roberts sent you this e-mail?

23 A. It was prompted by -- I had just started
24 with the Menlo Park Police Department, so I was
25 totally unaware of Mr. Zeleny and his activities. 11:53

1 And Sergeant Kaufman sent an e-mail that was
2 forwarded to me, via the chief, to bring me up to
3 speed about what his -- what Mr. Zeleny's
4 activities were prior to me being employed.

5 Q. How did he describe Mr. Zeleny's 11:53
6 activities?

7 A. How did Chief Roberts describe it?

8 Q. Correct.

9 A. He just -- he gave me a background of the
10 fact that Mr. Zeleny would come to protest a 11:53
11 company called NEA, which I had never heard of
12 before, and that in the past, he had actually gone
13 on the property with weapons and caused quite a
14 disturbance and that since that time, there had
15 been some kind of either stay-away order or a 11:54
16 trespass order instructing him to stay off the
17 property and that he continued his protest on the
18 public right-of-way.

19 Q. Did you have any understanding or did you
20 ever develop an understanding of what Chief Roberts 11:54
21 meant by "It's very touchy and political"?

22 A. All I could -- no. The only thing that he
23 spoke about is the fact that whenever Mr. Zeleny
24 appeared with all his weapons, we would be
25 inundated with phone calls, both by residents but 11:54

1 also by the companies and the organizations and the
2 entities that were in that shopping -- or that --
3 that's not a shopping center -- in that complex.

4 Q. Sir, you said something to the effect that
5 the department would be inundated with phone calls; 11:55
6 right?

7 A. He said in the past, they had been
8 inundated with phone calls, yes.

9 Q. Did the department stop being inundated
10 with phone calls after you started? 11:55

11 A. As I told you, there were phone calls. I
12 could not estimate how many were received for each
13 instance that he showed up.

14 Q. And beyond the effect on the police
15 department and the level of calls, did he say 11:55
16 anything else about why the situation was touchy
17 and political?

18 A. No.

19 Q. Do you see the handwriting on Exhibit 256?

20 A. I do. 11:55

21 Q. Do you know whose handwriting that is?

22 A. That's mine.

23 Q. The top note here says, "NEA Rosewood."
24 Do you see that?

25 A. No. It says, "Near Rosewood." That's my 11:55

1 handwriting.

2 Q. Near Rosewood?

3 A. Correct.

4 Q. Got it. What does the handwriting at the

5 bottom say?

11:56

6 A. "Special operations" I think I wrote.

7 Q. Separate from any discussion -- strike

8 that.

9 After Chief Roberts sent you this e-mail,

10 did you speak to Sergeant Kaufman or Sergeant

11:56

11 Romero about Michael Zeleny?

12 A. Yes.

13 Q. What did you talk about?

14 A. Again, they were bringing me up to speed.

15 I was brand-new as a commander. I had never heard

11:56

16 of Michael Zeleny nor NEA nor any of these issues

17 in the past. So they were just basically bringing

18 me up to speed about what has happened in the past

19 and what our response would normally be so that I

20 would have some historical perspective about how

11:57

21 the police department handled these in the past.

22 Q. There was a period of time when you were a

23 commander and Zeleny continued to protest; right?

24 A. (No response.)

25 Q. Let me rephrase that a little bit.

11:57

1 Mr. Zeleny continued protesting at NEA
2 after you became employed with the City of Menlo
3 Park; right?

4 A. That's correct.

5 Q. During that time period, he continued to 11:57
6 protest with unloaded firearms; right?

7 A. Yes.

8 Q. Did you wish that he would stop
9 protesting?

10 A. I had no personal opinion, other than as a 11:57
11 police commander, my concern is resources, public
12 safety and having to deal with folks who are
13 calling the police department saying, There's an
14 armed person, why aren't you doing anything about
15 this. There were several calls of that nature. So 11:58
16 it was something we had to deal with.

17 Q. Those were negative factors in terms of
18 managing the police department; right? The drain
19 on resources, inundation with calls, those weren't
20 good things; were they? 11:58

21 MR. MASTER: Objection. Vague and
22 ambiguous. Overbroad.

23 MR. ROBINSON: You can answer.

24 THE WITNESS: I'm not quite sure what
25 you're getting at. But this is part of our job. 11:58

1 We have to deal with this. Now, obviously, it
2 would be easier from a resource perspective that if
3 he wasn't there with guns, those resources could be
4 used somewhere else.

5 BY MR. ROBINSON: 11:58

6 Q. As a police commander, were you glad that
7 Michael Zeleny was using up the resources of the
8 department?

9 MR. MASTER: Objection. Vague and
10 ambiguous. Overbroad. 11:58

11 THE WITNESS: Was I happy and glad? Is
12 that what you're asking me?

13 MR. ROBINSON: Correct.

14 THE WITNESS: No.

15 BY MR. ROBINSON: 11:59

16 Q. Okay. So it wasn't good for the
17 department that Mr. Zeleny was using up resources
18 for his protests; was it?

19 A. Again, this is -- this is what the police
20 department is there for. I'm not sure what exactly 11:59
21 you are asking. You know, we have to give up
22 resources for all -- a myriad of calls, and this is
23 just one of them.

24 Q. How about being inundated with calls; were
25 you happy or glad that the police department was 11:59

1 inundated with calls when Michael Zeleny would show
2 up and protest?

3 MR. MASTER: Objection. Vague and
4 ambiguous. Argumentative.

5 Go ahead. 11:59

6 THE WITNESS: I don't know what my
7 emotional state was about the fact that we were
8 getting phone calls. It's something that we have
9 to handle and we handled.

10 BY MR. ROBINSON: 11:59

11 Q. Do you think it was a good thing for the
12 department to be inundated with calls about Michael
13 Zeleny?

14 MR. MASTER: Objection. Vague and
15 ambiguous. Overbroad. Argumentative. 11:59

16 Go ahead.

17 THE WITNESS: I don't -- anytime we get
18 numerous calls about situations, it is not a good
19 thing.

20 BY MR. ROBINSON: 12:00

21 Q. Was it a bad thing for the department to
22 be inundated with calls about Michael Zeleny?

23 MR. MASTER: Objection. Vague and
24 ambiguous as to what you mean by "bad thing." It's
25 also irrelevant. Argumentative. 12:00

1 Go ahead.

2 THE WITNESS: I don't know how to answer
3 your question. I'm sorry.

4 BY MR. ROBINSON:

5 Q. It's just a "yes" or "no" question. Was 12:00
6 it a bad thing for the department to be inundated
7 with calls about Michael Zeleny?

8 MR. MASTER: Same objections.

9 If you can answer, go ahead.

10 THE WITNESS: Again, I don't know how to 12:00
11 answer that question, whether it's good or bad.
12 That is subjective.

13 BY MR. ROBINSON:

14 Q. In your view as a police commander, was it
15 bad for the department to be inundated with calls 12:00
16 about Michael Zeleny?

17 MR. MASTER: Objection. Vague and
18 ambiguous. Overbroad. Now it's really
19 argumentative, Counsel.

20 If you can answer, go ahead. 12:00

21 THE WITNESS: I can't answer that.

22 BY MR. ROBINSON:

23 Q. In your view as a police commander, was it
24 bad for the department that Mr. Zeleny put a drain
25 on resources, as you characterized it? 12:01

1 MR. MASTER: Same objection. Misstates
2 his testimony.

3 Go ahead.

4 THE WITNESS: Again, I can't answer that.

5 When we're dealing with a limited number of 12:01

6 resources, anytime there is a drain, no matter what

7 it is, it's going to be a concern, and it's

8 something that we have to deal with. Whether that

9 means calling in people on overtime or reallocating

10 resources, that is a decision that's made on a 12:01

11 daily, if not hourly basis in a police department.

12 MR. MASTER: Are you uploading a new
13 document?

14 MR. ROBINSON: Yes.

15 MR. MASTER: Just let us know when you do 12:02
16 it.

17 (Page 310 through are 324
18 marked confidential and are
19 bound under separate cover
20 The non-confidential portion of
21 this transcript continues on page
22 325.)

23

24

25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

---000---

MICHAEL ZELENY,

Plaintiff,

vs.

No. CV 17-7357 JCS

GAVIN NEWSOM, et al.,

Defendants.

_____/

CONFIDENTIAL

CONTINUED VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI
BY VIDEOCONFERENCE
(Volume II - Pages 310 - 324)

Taken before DENISE M. LOMBARDO, CSR No. 5419

RPR, RMR, RDR, CRR

August 7, 2020

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PAGE

EXAMINATION BY MR. ROBINSON

314

E X H I B I T S

PLAINTIFF'S

PAGE

Exhibit 257

E-mail correspondence,

314

Bates No. Confidential 34

And Confidential 35

1 CONTINUED VIDEOTAPED DEPOSITION OF CHIEF DAVE BERTINI

2
3 BE IT REMEMBERED, that pursuant to Notice, and
4 on the 7th day of August 2020, commencing at the
5 hour of 10:05 a.m., before me, DENISE M. LOMBARDO,
6 a Certified Shorthand Reporter, appeared by
7 videoconference CHIEF DAVE BERTINI, produced as a
8 witness in said action, and being by me first duly
9 sworn, was thereupon examined as a witness in said
10 cause.

11
12 ---o0o---

13
14 APPEARANCES:

15
16 Appearing on behalf of the Plaintiff:

17 DAMION ROBINSON (by Zoom)

18 DAVID MARKEVITCH (by Zoom)

19 Affeld Grivakes LLP

20 2049 Century Park East, Suite 2460

21 Los Angeles, California 90067

22 (310) 979-8700
23
24
25

1 Appearing on behalf of the Defendant City of Menlo
2 Park; and the Deponent, Chief Dave Bertini:

3
4 TODD H. MASTER (by Zoom)
5 Howard, Rome, Martin & Ridley LLP
6 1900 O'Farrell Street, Suite 280
7 San Mateo, California 94403
8 (650) 365-7715
9 tmaster@hrmrlaw.com

10
11 Appearing on behalf of the Defendant Attorney
12 General Xavier Becerra:

13 JOHN W. KILLEEN (by Zoom)
14 Deputy Attorney General
15 Office of the Attorney General
16 (916) 210-6045
17 john.killeen@doj.ca.gov

18
19
20 ALSO PRESENT:

21 Ted Hoppe, Videographer (by Zoom)
22 Veritext Legal Solutions

23
24 Michael Zeleny (by Zoom)

1 EXAMINATION BY MR. ROBINSON:

2 Q. I've marked Exhibit 257. Let me know when
3 you see it.

4 (Plaintiff's Exhibit 257 marked

5 for Identification.)

12:02

6 THE WITNESS: Yes.

7 BY MR. ROBINSON:

8 Q. For the record, Exhibit 257 is Bates
9 marked Confidential 34 and Confidential 35. It's
10 two pages. Correct?

12:02

11 MR. MASTER: Counsel, we need to put this
12 under seal, then, this portion of this exhibit,
13 this testimony.

14 MR. ROBINSON: Okay. We can seal this.

15 MR. MASTER: So this exhibit and any
16 testimony about it.

12:03

17 MR. ROBINSON: Let's mark this portion of
18 the record "Confidential."

19 BY MR. ROBINSON:

20 Q. This is -- the top e-mail is not from you
21 or to you, but the e-mail starting about a third of
22 the way down the first page is from you to Matthew
23 Ortega and to Timothy Brackett and Charlene
24 Manning; correct?

12:03

25 A. Correct.

12:03

1 Q. And your e-mail refers to Zeleny; right?

2 A. Yes.

3 Q. And you mentioned in your e-mail, But
4 crazy people can be a bit erratic and not stick to
5 their schedule, so -- dot, dot, dot, dot, dot. Do 12:03
6 you see that?

7 A. I do.

8 Q. The crazy people you're referring to there
9 is Mr. Zeleny?

10 A. Yes. 12:03

11 Q. Did you have an opinion, at the time you
12 sent this e-mail in June of 2013, that Mr. Zeleny
13 was crazy?

14 A. This is an internal communication between
15 other police officers, and based on his activity 12:04
16 and the open carry of weapons and thousands of
17 rounds of ammunition, it was my opinion that that
18 was not something that was normally done.

19 MR. ROBINSON: I'm going to object to the
20 answer and move to strike as nonresponsive. 12:04

21 BY MR. ROBINSON:

22 Q. At the time you sent this e-mail on June
23 9th, 2013, was it your opinion that Mr. Zeleny was
24 crazy?

25 MR. MASTER: Objection. Asked and 12:04

1 answered.

2 THE WITNESS: As I stated, at the time, we
3 believed -- I believed, based on his activity, that
4 this was not normal. Now, the term "crazy" was
5 used very, very loosely in this internal e-mail. 12:04
6 And because of his activities, it was something
7 that was not, in my opinion, as a police commander
8 and as a police officer for, at that time, 25
9 years, that was not normal activity.

10 BY MR. ROBINSON: 12:05

11 Q. So when you referred to Mr. Zeleny in your
12 e-mail as "crazy people," what you meant is he's
13 engaging in activity that's not normal activity?

14 MR. MASTER: Objection. Asked and
15 answered. 12:05

16 Go ahead.

17 THE WITNESS: Yeah. It was not normal and
18 created an issue, again, that I've already
19 described, the public safety issues, especially in
20 this time frame when we had had numerous active 12:05
21 shooters, school shootings, mall shootings, et
22 cetera. So this was not, in my opinion, not normal
23 behavior by someone.

24 MR. ROBINSON: I'm going to object again
25 and move to strike as nonresponsive. 12:05

1 BY MR. ROBINSON:

2 Q. The question is just, when you referred to
3 Mr. Zeleny as "crazy people" in this e-mail, did
4 you mean he was engaging in activity that was not
5 normal? 12:05

6 MR. MASTER: Objection. Asked and
7 answered. Argumentative. He answered the
8 question.

9 Go ahead. You can answer it again.

10 THE WITNESS: As I stated, I used the term 12:06
11 "crazy" very loosely in this situation. He was not
12 acting, in my opinion, in a normal manner, and
13 that's why I said what I said.

14 BY MR. ROBINSON:

15 Q. In the Menlo Park Police Department, do 12:06
16 you ever deal with civil commitments?

17 A. Are you talking about 5150 of the Welfare
18 and Institutions Code commitment, 72 hours?

19 Q. Correct.

20 A. Yes. 12:06

21 Q. And in order to do a commitment, you have
22 to determine if the person is at risk of harm to
23 himself or to others; correct?

24 A. Actually, there's a third criteria. It's
25 with a harm to self, harm to others, or gravely 12:06

1 disabled based on a mental illness.

2 Q. In dealing with civil commitments of that
3 type, you have to make a determination about mental
4 illness; correct?

5 A. No, you don't make a determination about 12:07
6 mental illness. You just make a determination
7 whether it is possibly mental illness causing this
8 person to be a danger to himself, to others, or
9 gravely disabled.

10 Q. Did you ever consider trying to civilly 12:07
11 commit Mr. Zeleny?

12 A. No.

13 Q. Do you know if the department ever
14 considered that?

15 A. I don't know specifically, but any officer 12:07
16 that --

17 THE REPORTER: Excuse me. This is the
18 court reporter. There is some kind of
19 interference. Your whole answer cut out.

20 (Record read by the Reporter.) 12:07

21 MR. ROBINSON: Let me rephrase it.

22 BY MR. ROBINSON:

23 Q. Did the department, the police department
24 of the City of Menlo Park ever consider attempting
25 to civilly commit Mr. Zeleny? 12:08

1 A. Not that I'm not aware of.

2 MR. ROBINSON: Could we hear that on the
3 court reporter's side?

4 THE REPORTER: Yes. For whatever reason,
5 somehow there is now interference on his line. 12:08

6 MR. ROBINSON: So maybe we should take a
7 quick break and try to figure that out.

8 Chief Bertini, you're coming through, but
9 it's very, very garbled.

10 THE VIDEOGRAPHER: Going off the record. 12:08
11 The time now is 12:09.

12 (Off the record.)

13 THE VIDEOGRAPHER: Back on the record.
14 The time now is 12:10.

15 BY MR. ROBINSON: 12:10

16 Q. Chief Bertini, we're back on the record.

17 I think the question before we had
18 technical difficulties was: Did the City of Menlo
19 Park Police Department ever consider civilly
20 committing Mr. Zeleny? 12:11

21 A. Not that I am aware of.

22 Q. Do you know if any psychological or
23 psychiatric analysis was performed on Mr. Zeleny?

24 A. I have no personal knowledge of that.

25 Q. Do you have knowledge of that, whether or 12:11

1 not it's personal?

2 A. No, I have no knowledge myself of that, as
3 I sit here today.

4 Q. Could you estimate the number of times
5 that you've communicated -- "you" meaning the 12:11
6 department -- have communicated with NEA about
7 Mr. Zeleny?

8 A. I cannot answer -- well, I don't know how
9 many times prior to my -- my beginning in Menlo
10 Park. So from the time I started at Menlo Park, 12:11
11 there probably was maybe a dozen communications, 12
12 to 15. That would be my best estimate.

13 Q. How many times have you -- you,
14 personally, met with NEA in connection with
15 Mr. Zeleny and his protests? 12:12

16 A. Personally met with them, I think just
17 twice. Just twice.

18 Q. NEA has consistently expressed concerns to
19 the City of Menlo Park Police Department about
20 Mr. Zeleny and his protests; correct? 12:12

21 A. Yes.

22 Q. I'm going to try to figure out how to do
23 this.

24 Have you reviewed any of the audio files
25 that the City produced in connection with this 12:12

1 case?

2 A. I did review a couple of audio files that
3 were contacts with the -- with Mr. Zeleny and an
4 audio file of some meeting that occurred. I did
5 not know who the participants were. 12:13

6 Q. Was it the audio file that was marked at
7 the NEA deposition, the meeting audio file that
8 you're referring to?

9 A. Yes.

10 Q. So I'm going to try to make this work so 12:13
11 that you can hear the audio file. It may or may
12 not work, but let me try it.

13 So -- what I'm going to do is, I'm pulling
14 up an audio file that was produced by the City of
15 Menlo Park under the folder Audio, subfolder 12:13
16 12-495, subfolder Brackett with two Ts.

17 Have you seen the folders of audio files
18 that the City produced?

19 A. I don't recall. There was a great many
20 documents. I don't recall which ones I saw. 12:14

21 Q. Okay. So let me try to play this and see
22 if it's the same one you listened to.

23 THE REPORTER: I will not be reporting
24 what you're playing on that audio; is that correct?

25 MR. ROBINSON: That's fine. I'm just 12:14

1 trying to figure out if there's a technical way to
2 do this.

3 Yeah, I think -- we're going to have to
4 skip this for now. It's not going to work.

5 Let me mark another exhibit here. 12:15

6 MR. MASTER: We sealed part of this
7 "Confidential." We're not in that anymore;
8 correct?

9 MR. ROBINSON: No. So let's get off the
10 confidential record again. 12:15

11 (This ends the confidential portion
12 of the transcript. The deposition
13 continues on page 325.)
14
15
16
17
18
19
20
21
22
23
24
25

I, the undersigned, CHIEF DAVE BERTINI, do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

[illegible]

Date

REPORTER'S CERTIFICATE

I, DENISE M. LOMBARDO, do hereby certify:

That CHIEF DAVE BERTINI, in the foregoing deposition named, was present by videoconference and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken before me at said time and place, and was taken down in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings that took place;

And that the aforementioned 14-page transcript meets the California minimum transcript format standards.

IN WITNESS WHEREOF, I have hereunder subscribed my hand this 3rd day of September, 2020.

Denise M. Lombardo

DENISE M. LOMBARDO, CSR No. 5419
State of California

1 BY MR. ROBINSON:

2 Q. This one has been previously marked as
3 Exhibit 52. So I'm going to just move it into the
4 "Marked Exhibits" folder now. And the file name is
5 120416 - Meeting Minutes (52). 12:15

6 Do you see that file, Mr. Bertini?

7 A. Not yet. Can you give me page numbers,
8 please?

9 Q. Sure. So it's multiple pages, MP 88
10 through MP 94 and, again, previously marked as 12:16
11 Exhibit 52.

12 A. I have it. I have it.

13 Q. If you could turn to the section -- I'm
14 trying to find the section just now. There we go.
15 So on MP 93, there's a section at the bottom of the 12:16
16 page under "Sergeant Kaufman."

17 Do you see that?

18 A. Yes.

19 Q. Let me ask you a background question.
20 These are minutes from a management meeting of the 12:16
21 Menlo Park Police Department; correct?

22 A. That is correct.

23 Q. And this meeting took place in October of
24 2012; correct? Excuse me. April of 2012?

25 A. Yes. 12:17

1 Q. Did you participate in this meeting?

2 A. Yes.

3 Q. Do you recall Sergeant Kaufman talking
4 about the lack of a firm solution to ending

5 Mr. Zeleny's protests? 12:17

6 A. I don't have any recollection as I sit
7 here today, aside from what the document states.

8 Q. Was there ever a point in time, to your
9 knowledge, at the City of Menlo Park where the
10 police department was trying to find a solution to 12:17
11 end Mr. Zeleny's protests?

12 A. No.

13 Q. Do you have any understanding of why
14 Sergeant Kaufman indicated there seems to be no
15 firm solution to ending this protest? 12:17

16 A. No.

17 Q. Was the sentiment at this meeting in April
18 of 2012 that the City of Menlo Park Police
19 Department would prefer if Mr. Zeleny not continue
20 protesting? 12:18

21 A. I don't remember what the tenor of the
22 meeting was. I had only been employed there for
23 six months at this point. So I had very little
24 historical knowledge, aside from what they already
25 told me about it. 12:18

1 Q. Do you recall discussion about the photo
2 of Mr. Zeleny being featured in a legislative
3 committee meeting?

4 A. I do.

5 Q. What was that about? 12:18

6 A. Aside from what's in the document, I don't
7 know.

8 Q. Do you know why the City -- do you know if
9 the City of Menlo Park submitted that photo of
10 Michael Zeleny to the legislative committee? 12:18

11 A. It was my understanding that somehow they
12 received a photo. I'm not sure who it came from.

13 Q. Did the Menlo Park Police Department
14 support the open-carry ban in the legislative
15 process in the state of California? 12:19

16 MR. MASTER: Object. It's vague and
17 ambiguous and overbroad.

18 Go ahead.

19 THE WITNESS: We don't -- at that point, I
20 don't know -- I'm not sure whether the police 12:19
21 department supported it or not. Again, I had been
22 there for six months. We don't normally get
23 involved in the political aspects of the creation
24 of laws unless we're asked.

25 MR. ROBINSON: Why don't we take a break 12:19

1 here. We're at a stopping point, I think.

2 THE VIDEOGRAPHER: Going off the record.

3 The time now is 12:20.

4 (Lunch recess taken.)

5 THE VIDEOGRAPHER: Back on the record. 01:10

6 The time now is 1:10.

7 BY MR. ROBINSON:

8 Q. So why don't we go ahead and start with
9 the audio file. And let's go to the file that's --
10 and this is from the folder Audio 12-495, Brackett, 01:10
11 and let's open up the file 14750141-1.

12 (Playing audio recording.)

13 BY MR. ROBINSON:

14 Q. Chief Bertini, I'm just going to ask you
15 first, is that the audio recording that you 01:12
16 mentioned listening to before?

17 A. No.

18 Q. Okay. Do you recognize the voice on that
19 audio recording, the woman who was just talking
20 before we stopped? 01:12

21 MR. MASTER: Hold on. Hold on.

22 Damion, I just want to object because he
23 didn't identify the -- it looks like you ran from
24 the start time of zero to one minute and eight
25 seconds. It looks like the audio is close to 40 01:12

1 minutes long. So I just want to make sure the
2 record is clear in terms of what portion was played
3 back for the witness.

4 MR. ROBINSON: Okay. So we played from
5 zero to one minute and eight seconds. 01:12

6 BY MR. ROBINSON:

7 Q. Do you recognize the voice that was
8 speaking when we stopped the video?

9 A. I recognize one voice.

10 Q. Which voice is that? 01:12

11 A. Sergeant Sharon Kaufman.

12 Q. Was that the voice that was just speaking
13 from about one minute to a minute eight?

14 A. Yes.

15 Q. The voices were saying, Aside from making 01:13
16 your lives miserable, Mr. Zeleny hadn't committed
17 any crime?

18 A. I'm sorry. Was that a question?

19 Q. Yes. Was that Sergeant Kaufman who made
20 those statements in the recording we just listened 01:13
21 to?

22 A. Yes.

23 Q. Let's go ahead and -- let's go ahead,
24 David, and if you could play -- if you go back to
25 the audio files. There should be -- yeah. So 01:13

1 let's start with 1471553 and let me just identify
2 it.

3 I'm going to have David open the file that
4 was produced to us by the City of Menlo Park under
5 the folder Audio, subfolder 12-1824 and subfolder 01:14
6 Foy.

7 Chief Bertini, how does the City of Menlo
8 Park store audio files related to cases?

9 A. Well, you have to be more specific about
10 the date. 01:14

11 Q. Okay. So in the June 2013 time frame, how
12 were audio files related to either information or
13 criminal cases stored by the City of Menlo Park?

14 A. I'm sorry. There was interference. Did
15 you say June 2013? 01:14

16 Q. Correct.

17 A. Yeah. At the time, the officers were
18 required to carry digital recorders called Puma
19 devices, P-U-M-A, and every time they had a contact
20 with anybody, they were required by policy to turn 01:14
21 on their recorders. And those recordings would be
22 uploaded at the end of the shift to a server in the
23 police department.

24 Q. And were they stored by case number?

25 A. It only -- only if a case number was taken 01:15

1 would they be stored by case number. The officers
2 would have the ability to go in and add notes to
3 any audio file. And if a case number had been
4 taken, a case number would have been attached to
5 the audio files. 01:15

6 Q. Okay. So let's take -- well, let's
7 actually start with the audio recording. So if an
8 audio recording was in a folder or file associated
9 with a case number, would it then be categorized by
10 which officer made the recording, meaning which 01:15
11 officer's device it was?

12 A. That's -- the officer would have signed in
13 with their ID number, and it would prompt the
14 system to understand that came from a certain
15 officer. Then the officer would upload the 01:15
16 individual files, and if there were notes that
17 needed to be attached, they would -- they would
18 input those into the computer system.

19 And if a case had been taken, then a case
20 number would be attached, but if there was no case 01:16
21 taken, then it would just be a file, date, time and
22 the officer identified.

23 MR. ROBINSON: So, David, let's start with
24 14771553.

25 (Playing audio recording.) 01:16

1 MR. ROBINSON: So let's start that at
2 three minutes, 11 seconds.

3 MR. MASTER: What did you say, Damion?

4 MR. ROBINSON: Three minutes, 11 seconds.

5 There we go. 01:16

6 (Playing audio recording.)

7 MR. ROBINSON: So, for the record, we've
8 listened to three minutes, seven seconds through
9 four minutes, 13 seconds.

10 BY MR. ROBINSON:

11 Q. Chief Bertini, do you recognize the voices
12 on that recording?

13 A. Yes.

14 Q. Who are they?

15 A. Officer Foy, F-O-Y, and Sergeant Soares, 01:18
16 S-O-E-R-S (sic).

17 Q. Do you recall the incident that they're
18 referring to in that audio recording?

19 A. I do.

20 Q. What incident was that? 01:18

21 A. That was the incident where Mr. Zeleny
22 came to the location to protest with weapons and
23 had what we believed was a concealed weapon on his
24 person.

25 Q. When you say "we believed," who are you 01:18

1 referring to as "we"?

2 A. The police department.

3 Q. Did you believe that he had a concealed
4 weapon?

5 A. After doing the research that we did and 01:19
6 asking -- looking up the Penal Code section and
7 also asking advice from the district attorney's
8 office, we believed it could be, although we wanted
9 to be 100 percent sure. So in this case, we did
10 not, as Officer Foy had said, make an arrest. 01:19
11 Instead, we sent the case to the district
12 attorney's office for review.

13 Q. In the conversation we just listened to,
14 was it Officer Soares who said that Bertini would
15 be doing research? Do you recall that statement? 01:19

16 A. That's Sergeant Soares and --

17 Q. Was he referring to --

18 A. He said -- the audio kind of speaks for
19 itself. He said he was going to ask me my advice
20 since I was his immediate supervisor. 01:20

21 Q. And did he ask you for advice?

22 A. Yes.

23 Q. Did you give him advice?

24 A. Well, I did research before I gave him
25 advice. But, yes, eventually, I did give him 01:20

1 advice.

2 Q. What research did you do, you, personally?

3 A. As I just stated, I looked up the Penal
4 Code section. I e-mailed the DA's office. I sent
5 a picture along with it to get their -- their 01:20
6 opinion on it, because it was really an
7 interpretation of the Penal Code.

8 And based on the research I did, as I've
9 already stated, instead of making an arrest of
10 Mr. Zeleny, I instructed them just to write a 01:20
11 report, and it would be forwarded to the DA's
12 office for review.

13 Q. Did you communicate with the DA's office
14 that same day?

15 A. Yes. 01:20

16 Q. And you sent them some information, it
17 sounds like?

18 A. Correct.

19 Q. How did you send it to them?

20 A. E-mail. 01:21

21 Q. Do you know if that e-mail has been
22 produced in this case?

23 A. It has.

24 Q. So did the DA respond to you?

25 A. Yes. The DA responded to me, but I don't 01:21

1 recall, as I sit here today, whether they responded
2 via e-mail or phoned me. I believe it was e-mail.

3 Q. Did they respond the same day?

4 A. I'm not 100 percent sure, but I think so.

5 Q. What was their response? 01:21

6 A. Just as -- the advice that I gave. Based
7 on their objective looking at it, that they would
8 have to make a decision based on the entire
9 totality of the circumstances. So if we were to
10 send a report up for their review, they would then 01:21
11 make a charging decision.

12 Q. And did you relate to the officers on
13 scene that they should just take a report and not
14 make an arrest that day?

15 A. No. 01:22

16 Q. Did you relay that to anyone?

17 A. Yes.

18 Q. Who did you relay that to?

19 A. Sergeant Soares.

20 Q. And what was Sergeant Soares' response to 01:22
21 that?

22 A. He said he would relay it to the officers
23 on scene.

24 Q. Let's go to the next audio file from the
25 same folder, Audio, 12-1824-4. 01:22

1 (Playing audio recording.)

2 MR. MASTER: Stop the recording, please.

3 For the record, before we play it, can you

4 identify, other than the incident report or case

5 report number, what the audio file is that we're 01:23

6 playing and what portion we're playing?

7 MR. ROBINSON: Yes. So we're playing the

8 audio file 14771554. And let's start at 14:29 and

9 go to 19 minutes.

10 (Playing audio recording.) 01:23

11 BY MR. ROBINSON:

12 Q. So we've listened to 14:29 through 19:05

13 on the audio recording.

14 Chief Bertini, do you recognize the voices

15 in that audio recording? 01:28

16 A. I only recognize one voice.

17 Q. Which voice is that?

18 A. Officer Foy.

19 Q. And the person who said that isn't a

20 concealed carry violation, that was Officer Foy? 01:28

21 A. I don't recall whether -- what exactly he

22 just said. Ask the question again.

23 Q. The voice that said, It's not a concealed

24 carry violation, was that Officer Foy?

25 A. I don't believe he exactly said that, but 01:29

1 I think that's what he intimated. It was an
2 open-carry issue, yes.

3 Q. So we can listen to it again. My question
4 is, the person who is on the recording saying, in
5 substance, this isn't a concealed carry violation 01:29
6 was Officer Foy; is that right?

7 MR. MASTER: Asked and answered.
8 Argumentative. It's vague and ambiguous.

9 If you want to play back the exact
10 statement that you're saying and identify it for 01:29
11 the record at what time frame, then he can answer
12 more directly, if you'd like, but, otherwise,
13 you're asking about five minutes. He can answer
14 the question.

15 Go ahead. 01:29

16 MR. ROBINSON: You can go ahead and
17 answer, Chief Bertini.

18 THE WITNESS: It was Officer Foy who said
19 something to the effect of concealed carry versus
20 open carry, yes. 01:29

21 BY MR. ROBINSON:

22 Q. Okay. So there were two voices on the
23 call; correct?

24 A. That's correct.

25 Q. And one of the voices, which was more 01:30

1 faint, was asking questions about whether the
2 holster with the gun in it could be considered a
3 concealed carry; correct?

4 A. It was hard to discern what that other
5 voice was saying. It sounds like it was a phone 01:30
6 call. But, yeah, they were -- he was asking
7 questions of Officer Foy, yes.

8 Q. And Officer Foy was answering those
9 questions in the negative; correct?

10 MR. MASTER: Objection. Vague and 01:30
11 ambiguous. Compound.

12 THE WITNESS: I think the audio recording
13 speaks for itself. I don't know verbatim what was
14 just said. I generally listened to it and I heard
15 the conversation, and there was conversation about 01:30
16 the weapon and the holster and whether it was a
17 concealed weapon or not.

18 BY MR. ROBINSON:

19 Q. Did you understand the substance of what
20 was being said in the conversation? 01:30

21 A. Yes.

22 Q. Did you understand the substance of what
23 Officer Foy was saying in the conversation to be
24 the weapon was not a concealed weapon?

25 MR. MASTER: Objection. Misstates the 01:31

1 testimony. The document and the record speaks for
2 itself. It's argumentative.

3 You can answer.

4 MR. ROBINSON: You can answer the
5 question. 01:31

6 THE WITNESS: And as I stated to you, just
7 generally, it was a discussion about. I don't know
8 whether he said exactly those words, so I'm not
9 going to say "yes" to that.

10 BY MR. ROBINSON: 01:31

11 Q. So when I ask you about the substance of a
12 conversation, do you understand what that means?

13 A. (No response.)

14 Q. I didn't hear your answer.

15 A. I understand what "substance of a
16 conversation" is. 01:31

17 Q. What do you understand the substance of
18 what Officer Foy was saying to be?

19 MR. MASTER: Objection. Vague and
20 ambiguous. It's a five-minute recording. Is there 01:31
21 a particular part of the recording you're referring
22 to, Counsel?

23 MR. ROBINSON: No. I'm referring to the
24 whole recording.

25 BY MR. ROBINSON: 01:32

1 Q. What was the substance of what Officer Foy
2 was saying?

3 MR. MASTER: Also compound. The document
4 speaks for itself.

5 Go ahead. Lacks foundation. Calls for 01:32
6 speculation as well.

7 THE WITNESS: As I was not a party to this
8 conversation -- I just heard what everybody else
9 just heard. It sounded to me that Officer Foy was
10 describing the situation to some other person who 01:32
11 was asking questions to clarify whether or not this
12 met the criteria for the Penal Code section that he
13 mentioned. That's the substance of the call.

14 BY MR. ROBINSON:

15 Q. From listening to the recording, do you 01:32
16 have an understanding of what Officer Foy's view at
17 the time was, at the time the recording was made,
18 about whether this was a concealed weapon?

19 MR. MASTER: Objection. Lacks foundation.
20 Calls for speculation. 01:32

21 Go ahead.

22 THE WITNESS: Based on what the call --
23 based on what the recording was is they were trying
24 to determine whether or not this weapon in a
25 holster with a small lock on it was applicable for 01:32

1 the Penal Code section that he actually quoted
2 about whether or not this person could have this
3 weapon and whether it was concealed or not.

4 BY MR. ROBINSON:

5 Q. Okay. How long did you work with Officer 01:33
6 Foy?

7 A. Two or three years.

8 Q. Did you have communications with him?

9 A. Just informal. The most communication we
10 had is when he was a recruit training officer at 01:33
11 the police academy and I was an instructor there.

12 Q. You knew him, though; right?

13 A. Yes. He was a police officer in a very
14 small police department.

15 Q. And you were commander at that time; 01:33
16 right?

17 A. Correct.

18 Q. So based on your experience with Officer
19 Foy in your role within the Menlo Park Police
20 Department and hearing the audio recording we just 01:33
21 listened to, is it accurate that Officer Foy
22 conveyed in the audio recording that he did not
23 believe that Mr. Zeleny was carrying a concealed
24 weapon at the time?

25 MR. MASTER: Objection. Again, lacks 01:34

1 foundation. You're being argumentative, Counsel.
2 And it also is vague and ambiguous and overbroad
3 and compound. The record speaks for itself.

4 Go ahead. You can answer one more time.

5 THE WITNESS: As I stated, I will not 01:34
6 answer in the affirmative to that specific quote
7 you just said. I would refer you back to the
8 recording. And the recording speaks for itself. I
9 don't know whether he said those exact words or
10 not. 01:34

11 BY MR. ROBINSON:

12 Q. Did you speak to Officer Foy about
13 whether, during this June 2013 -- strike that.

14 Did you speak to Officer Foy about
15 whether, during this June 2012 incident, Mr. Zeleny 01:34
16 was carrying a concealed weapon?

17 A. No.

18 Q. Did you talk to Officer Foy at all about
19 this incident in June of 2012?

20 A. Not that I recall. 01:34

21 Q. Did you talk to anyone about the incident
22 in 2012, other than Sergeant Soares and the DA's
23 office?

24 A. Yes. I spoke to the police chief --

25 Q. Sorry. 01:35

1 MR. MASTER: Is there a question?

2 MR. ROBINSON: Let me rephrase.

3 BY MR. ROBINSON:

4 Q. Before the case was referred to the DA's
5 office for prosecution, did you speak to anyone 01:35
6 other than the DA's office and Sergeant Soares?

7 A. I spoke to many people. Are you asking
8 specifically about a certain subject?

9 Q. Yeah. Did you speak to them about this
10 June 2012 incident that resulted in Mr. Zeleny's 01:35
11 prosecution?

12 A. Yes. I spoke to my immediate supervisor,
13 who was the chief of police.

14 Q. What did you tell the chief of police?

15 A. I brought him up to speed on what was 01:35
16 happening.

17 Q. This was before it was referred to -- for
18 prosecution?

19 A. It was probably contemporaneous, because
20 that happened within a couple of days. 01:36

21 Q. And what did the chief of police say about
22 it?

23 A. Nothing -- nothing that I recall. Nothing
24 remarkable.

25 Q. Whose decision was it to refer it to the 01:36

1 DA's office for potential prosecution?

2 A. It was a decision made by the entire -- by
3 the police department through the officer --
4 Officer Foy, Sergeant Soares, myself and the advice
5 that we had been given from the DA's office. So it 01:36
6 was a collective decision, in essence.

7 Q. But you didn't -- strike that.

8 You talked -- did you talk to Officer
9 Soares about the incident after -- after you had
10 spoken to the DA's office? 01:36

11 A. Sergeant Soares?

12 Q. Sure. Did you talk to Sergeant Soares
13 about the incident after you had spoken to the DA's
14 office?

15 A. Yes. As I stated earlier, I gave him the 01:36
16 opinion of the DA's office, and collectively we
17 decided to take the course of action that was, in
18 fact, taken.

19 Q. When you say "collectively," you're
20 referring to yourself and Officer -- Sergeant 01:37
21 Soares?

22 A. And the DA's office.

23 Q. And the DA's office.

24 Was Officer Foy involved in any of those
25 discussions? 01:37

1 A. No. He was only involved as far as
2 getting direction from Sergeant Soares.

3 Q. Did you give any input into Officer Foy's
4 report that he generated that day in June of
5 2012?

01:37

6 A. No.

7 Q. Do you know if Sergeant Soares gave any
8 input?

9 A. I don't know.

10 Q. Did you speak to Sergeant Kaufman about
11 the incident before Mr. Zeleny's case was referred
12 for prosecution?

01:37

13 A. As I sit here today, I don't recall
14 if I had any conversations with Sergeant Kaufman.

15 Q. I'm marking as Exhibit 258 a document
16 produced by the City of Menlo Park Police
17 Department. It's MP 1595 through 1596. Let me
18 know when it pops up.

01:38

19 (Plaintiff's Exhibit 258 marked
20 for Identification.)

01:38

21 MR. MASTER: Bear with me. I got booted
22 out, for some reason.

23 THE WITNESS: I'm sorry. Did you say
24 Exhibit 258?

25 MR. ROBINSON: 258, correct.

01:38

1 THE WITNESS: Okay. I have it up.

2 BY MR. ROBINSON:

3 Q. Do you recognize --

4 MR. MASTER: Time-out. Time-out. I got
5 booted out. Hold on a second. I'm getting back 01:39
6 in. Hold on one second.

7 Okay. 258, Damion?

8 MR. ROBINSON: Right.

9 MR. MASTER: Thank you. I'm in. Thank
10 you. 01:39

11 BY MR. ROBINSON:

12 Q. Do you recognize this document?

13 A. Yes.

14 Q. What is it?

15 A. It's a CAD, or a computer-aided dispatch, 01:39
16 incident report.

17 Q. Is this the incident report that relates
18 to the concealed carry case against Mr. Zeleny?

19 A. It is the computer-aided dispatch incident
20 that is associated with the police report 12-1824. 01:39

21 Q. And that case number, 12-1824, is the case
22 that resulted in the criminal prosecution of
23 Mr. Zeleny?

24 A. That's correct.

25 Q. So let's go down the right -- or the left 01:40

1 column on the first page of the document. There's
2 a -- it looks like it says "Unit Times" and next to
3 that "Officers." Do you see that?

4 A. I do.

5 Q. The numbers there, are those identifying 01:40
6 numbers for each of the officers that were involved
7 in the incident?

8 A. Those are called "call signs."

9 Q. Okay. And those identify the officers
10 involved? 01:40

11 A. They identify the officers at the time of
12 this incident, yes.

13 Q. Okay. Let's go to the first one. So
14 14778, does that refer to a particular officer
15 involved in this incident? 01:40

16 A. That is an ID number of an officer.

17 Q. Do the ID numbers stay the same from
18 incident to incident or do they change?

19 A. ID numbers stay the same. Their call
20 signs will change based on seniority. 01:41

21 Q. So the numbers in the column here under
22 "Officers" that we're looking at that starts with
23 14778, are those numbers that change based on
24 seniority?

25 A. They do not. The other numbers change 01:41

1 based on seniority, the B numbers and S numbers.

2 Q. Got it.

3 So going -- starting with the one that's
4 14778, there's a "Dispatch" and that looks like a
5 time; is that right? 01:41

6 A. Yes.

7 Q. Does that refer to the time that that
8 officer was dispatched to the incident?

9 A. Yes.

10 Q. And "On Scene" is the time that the 01:42
11 officer arrived on the scene of the incident?

12 A. Yes.

13 Q. What is "Clear"?

14 A. That's when the officer said that they
15 were finished with their handling of the incident. 01:42

16 Q. Let's go over to the next column, "Disp-on
17 Scene." What does that mean?

18 A. Dispatched on the scene means how long it
19 took them to be dispatched till when they're on
20 scene. 01:42

21 Q. Understood.

22 And "On Scene to Clear," that's the amount
23 of time that they were actually on the scene before
24 they were clear?

25 A. Correct. 01:42

1 Q. Let's go down to the "Time," "Event" and
2 "By" section of it. So there's an entry No. 2. It
3 refers to, "Incident type changed from info to
4 area."
5 Do you see that? 01:42
6 A. Yes.
7 Q. What does "info" mean?
8 A. Information.
9 Q. What types of incidents are covered by
10 "Info" incident type? 01:43
11 A. Info incident types are just that. They
12 were information for police officers, beat
13 information.
14 Q. And what about "Area"; what does the area
15 incident type refer to? 01:43
16 A. An area check for something, any type
17 of -- something suspicious that they would call in.
18 Q. Let's go down to the next page. There's
19 an entry No. 24 at 1400:41.
20 A. Okay. 01:43
21 Q. It says, Closed - Disposition Type RT. Do
22 you see that?
23 A. I do.
24 Q. Or Disposition RT. What does "Disposition
25 RT" refer to? 01:43

1 A. Report taken.

2 Q. So -- and the time there on the left is
3 the time that the report was taken?

4 A. No, not necessarily. It's just when the
5 disposition was entered into CAD. 01:44

6 Q. So by 2:00 o'clock p.m. on the date of
7 this incident, June 13th, 2012, there had been a
8 report taken. Is that accurate?

9 A. Correct.

10 Q. And then the next entry down has the date 01:44
11 June 14th, 2012, the next day. Do you see that?

12 A. Yes.

13 Q. At 1:06 a.m.?

14 A. Yes.

15 Q. "Incident type changed from area to 01:44
16 12020." Do you see that? What is 12020?

17 A. 12020 refers to a Penal Code section,
18 which is a weapons violation.

19 Q. So this reflects the change of the
20 incident type from an area -- an area incident to a 01:44
21 criminal-case incident; right?

22 A. Yes.

23 Q. Do you have an understanding of why the
24 incident type was changed at 1:00 in the morning
25 the next morning? 01:45

1 A. It's typical when the graveyard dispatches
2 are -- after the reports are generated, they will
3 go in and correct CAD incidents, if a report
4 reflects something other than what the CAD says.
5 In this case, it was originally entered as an area 01:45
6 check, and then when the police report was started,
7 it was started as a 12020 PC, Penal Code section.
8 So it would be a common practice for them to change
9 the CAD incident type.

10 Q. When was the report started? 01:45

11 A. I don't know.

12 Q. Do you know what -- how do you know what
13 the incident type was on the report when it was
14 started?

15 A. Because I've seen the police report. 01:45

16 Q. Can the incident type change on a police
17 report?

18 A. On the CAD or the police report?

19 Q. On the police report.

20 A. Certainly. The charges can be changed 01:46
21 until the report is completed and locked.

22 Q. Have you seen any version of the report
23 relating to this incident before it was completed
24 and locked?

25 A. No. 01:46

1 Q. Do you have any way of knowing what the
2 incident type was listed before it was completed
3 and locked?

4 A. No.

5 Q. So it's possible that it started out as an 01:46
6 informational report; correct?

7 A. I have no idea. Anything is possible. I
8 don't have any recollection or knowledge of that.

9 Q. At some point, the incident report -- the
10 police report was finalized as a criminal report; 01:46
11 right?

12 A. Well, based on the CAD screen I see right
13 here, by 1:00 o'clock the next morning, it had
14 already been made to be a 12020. That's why the
15 CAD call type was changed. 01:47

16 Q. Do you know if the report was finalized
17 before 2:00 p.m. on June 13th, 2012?

18 A. I have no idea.

19 Q. At any point in time between the time that
20 Officer Foy arrived on the scene that morning and 01:47
21 1:06 a.m. the next morning, do you know when he
22 started preparing the report?

23 A. No idea.

24 Q. Do you have any idea when he finalized the
25 report? 01:47

1 A. No.

2 Q. Do you have any idea of whether he made
3 changes to the report after the first draft?

4 A. No.

5 Q. Do you have any idea if anyone other than 01:47
6 Officer Foy made changes to the report?

7 A. No.

8 Q. Is there any way to tell, in looking at
9 the report, whether changes were made by Officer
10 Foy or any other person? 01:48

11 A. When it's in draft form, no, but in order
12 to enter into the report-writing part of the
13 system, it's password protected. So only the
14 officer that had his own password would be able to
15 go and make changes. Now, other officers could 01:48
16 attach supplemental reports, but no other officer
17 would be able to go into his actual report and
18 change it.

19 Q. But there's no way -- aside from Officer
20 Foy having to be the person to make changes to the 01:48
21 report, is there any way to tell whether he made
22 changes to the report?

23 A. I don't believe there is. I don't know.

24 Q. So I'm going to go ahead and mark Exhibit
25 259. 01:49

1 (Plaintiff's Exhibit 259 marked
2 for Identification.)

3 BY MR. ROBINSON:

4 Q. Let me know when it pops up.

5 A. I have it. 01:49

6 Q. So for the record, Exhibit 259 is multiple
7 pages. It's Bates marked MP 170 through MP 179;
8 correct?

9 A. Yes.

10 Q. Do you recognize Exhibit 259? 01:49

11 A. I recognize it as a police report.

12 Q. Is this the police report that resulted in
13 referral of Mr. Zeleny's case for prosecution?

14 A. Yes.

15 Q. And if you go down to the page that's 01:49
16 marked MP 172, it says, "Prepared by Foy, Jeremy."

17 Do you see that?

18 A. I do.

19 Q. Does that indicate that Officer Foy
20 prepared this report? 01:50

21 A. Yes.

22 Q. And "Approved By," it's Sergeant Kaufman
23 there. Do you see that?

24 A. I do.

25 Q. Does that indicate that Sergeant Kaufman 01:50

Page 354

1 approved the report?

2 A. Yes.

3 Q. Do you have an understanding of why
4 Sergeant Kaufman approved it rather than Sergeant
5 Soares? 01:50

6 A. Sergeant Soares was the detective sergeant
7 at the time, and Sergeant Kaufman was patrol. So
8 it would be logical that it would be Sergeant
9 Kaufman who was the watch commander to approve the
10 report of the patrol officer. 01:50

11 Q. Do you know whether, based on your
12 personal observation or any research you have done
13 or anything else, whether Sergeant Kaufman
14 suggested to Officer Foy anything to include in his
15 report? 01:51

16 A. I have no idea.

17 Q. Keeping on the same page, MP 172, two
18 paragraphs above "Crime Scene," there's the
19 statement: "Based on the evidence observed, I
20 believe that Zeleny was in violation of PC 01:51
21 25400(a)(2), carrying a concealed firearm on his
22 person."

23 Do you see that?

24 A. I do.

25 Q. Do you know what caused Officer Foy to 01:51

1 come to that conclusion?

2 A. Not specifically, no.

3 Q. Do you know generally?

4 A. Well, obviously, it had to do with the gun
5 that Mr. Zeleny was wearing in the holster that was 01:51
6 concealed, the discussions he had with Sergeant
7 Soares, the discussion I had with the DA's office,
8 and the ultimate decision collectively made to send
9 the case over, as the DA requested, for review.

10 And this would be the appropriate section that was 01:52
11 used.

12 Q. So in your understanding, part of the
13 reason that Officer Foy believed that Zeleny was in
14 violation of Penal Code 25400 is because of a
15 collective decision that was made between you, 01:52
16 Officer Foy and Officer -- or Sergeant Soares to
17 refer this case for prosecution?

18 A. And the DA's office and their input, yes.

19 Q. In the ordinary course of police work for
20 the City of Menlo Park, does the officer on the 01:52
21 scene make the call about whether something should
22 be cited as a crime or not?

23 A. Sometimes. Sometimes they ask for help
24 from their supervisors or even the command staff
25 depending on the situation. If they have -- if 01:53

1 it's a situation that may have different
2 interpretations -- sometimes laws are not written
3 very clear, and it's up to us, as the police
4 department, police officers, to interpret those
5 laws. And sometimes it's difficult to interpret 01:53
6 those laws, so there is many times where other
7 people are asked their opinion about the law.
8 Sometimes even the DA's office is asked their
9 opinion.

10 Q. Did you testify in Michael Zeleny's case, 01:53
11 his criminal case?

12 A. This specific -- in this criminal case
13 that we're speaking of, yes.

14 Q. Did Officer Foy testify, to your
15 knowledge? 01:53

16 A. I believe he was the investigating
17 officer. And I don't know whether he testified or
18 not.

19 Q. You understand that Zeleny was acquitted;
20 right? 01:54

21 A. Yes.

22 Q. You understand the Court found that the
23 weapon was not concealed; right?

24 A. Yes.

25 Q. Did you accept the Court's determination 01:54

1 that Mr. Zeleny hadn't committed a crime in this
2 instance?

3 A. My acceptance is irrelevant. I have no
4 opinion whatsoever.

5 Q. So, to your knowledge, has Mr. Zeleny ever 01:54
6 committed a crime in the city of Menlo Park?

7 A. I don't know.

8 Q. Do you have any knowledge of Mr. Zeleny
9 committing a crime in the city of Menlo Park?

10 A. I do not have any personal knowledge of 01:54
11 him committing a crime.

12 Q. Do you have any secondhand knowledge of
13 him committing a crime in the city of Menlo Park?

14 A. Aside from the concealed weapon, no.

15 Q. The acquittal established as a matter of 01:54
16 law that the concealed weapon was not a crime;
17 right?

18 MR. MASTER: Argumentative, Counsel.
19 Calls for a legal conclusion. He's not a lawyer.
20 Come on. Move on. 01:55

21 THE WITNESS: Acquitted and not guilty are
22 two different things, Counsel.

23 BY MR. ROBINSON:

24 Q. After Mr. Zeleny -- after Mr. Zeleny's
25 criminal case was over, did you still believe he 01:55

1 committed a crime in connection with the
2 concealed-carry incident that we've been talking
3 about?

4 MR. MASTER: That's completely irrelevant
5 and calls for a legal conclusion. Argumentative. 01:55

6 Go ahead.

7 THE WITNESS: I have no -- I have no
8 opinion.

9 MR. ROBINSON: All right. Why don't we
10 take a five-minute break here. 01:55

11 THE VIDEOGRAPHER: Going off the record.
12 The time now is 1:56.

13 (Off the record.)

14 THE VIDEOGRAPHER: Back on the record.
15 The time now is 2:04. 02:04

16 MR. ROBINSON: So why don't we start with
17 John. You wanted to -- I guess you're leaving us,
18 John. So --

19 MR. KILLEEN: At least temporarily. So,
20 for the record, I will be dropping off the 02:04
21 deposition for some period of time. If you've
22 concluded in that time, we will waive our right
23 to ask the chief any questions. If I return, I
24 will let you know, if the deposition is still going
25 on.

1 (Plaintiff's Exhibit 260 marked
2 for Identification.)

3 BY MR. ROBINSON:

4 Q. Okay. So I just marked another exhibit,
5 Exhibit 260. And it's multiple pages. It's MP
6 1858 through MP 1866. Is that accurate?

7 A. Yes.

8 Q. Do you recognize this to be a police
9 report as generated by the Menlo Park Police
10 Department?

11 A. Yes.

12 Q. After Mr. Zeleny's criminal case for
13 concealed carry was resolved, did you have any
14 discussions with the DA about that case, or the
15 DA's office?

16 A. About which one? The one I'm looking at
17 right now or the prior?

18 Q. No. No. The one we were talking about
19 earlier. So the criminal case against Mr. Zeleny
20 for concealed carry, after that case was resolved,
21 did you have any discussion with the DA's about it?

22 A. I did not.

23 Q. Did you have any discussions with anybody
24 about it?

25 A. Not that I recall.

1 THE REPORTER: Excuse me. This is the
2 court reporter. Technical difficulties. Just give
3 me two minutes, please.

4 (Off the record.)

5 THE REPORTER: Thank you. Go ahead. 02:07

6 BY MR. ROBINSON:

7 Q. Has Mr. Zeleny conducted any protests in
8 the city of Menlo Park that you're aware of since
9 his criminal case was resolved?

10 A. Not that I recollect. 02:08

11 Q. Has Mr. Zeleny, to your knowledge, carried
12 any -- openly carried any unloaded firearms in the
13 City of Menlo Park since his criminal case
14 resolved?

15 A. I don't -- I'm unsure of the date of the 02:08
16 criminal case resolving, and if he continued after
17 that or not, I don't recall.

18 Q. When is the last time that you're aware of
19 that Mr. Zeleny has carried a firearm of any kind
20 in the city of Menlo Park? 02:08

21 A. I don't recall. It would have to be an
22 estimate. It would be prior to the legislation
23 about open carry of long guns. So I think that was
24 2014, if I remember correctly.

25 Q. So in approximately the past six years, 02:09

1 you're not aware of Mr. Zeleny ever carrying a
2 firearm in the city of Menlo Park. Is that
3 accurate?

4 A. I can't be specific about the dates. Like
5 six years, it could be five years and a half, it 02:09
6 could be five, six and a half, but, yes.

7 Q. Do you -- at the current time, do you
8 suspect Mr. Zeleny of committing any crime?

9 A. No.

10 Q. I'm sorry. I didn't catch that. 02:09

11 A. No.

12 Q. When is the last time that you suspected
13 Mr. Zeleny of committing or being about to commit a
14 crime?

15 A. I believe the situation that we just 02:09
16 discussed with the concealed weapon.

17 Q. Do you still have your Zeleny file, your
18 personal file?

19 A. It still exists in the chief's office.

20 Q. And the Menlo Park Police Department still 02:10
21 maintains that binder of sensitive information
22 about Mr. Zeleny; correct?

23 A. Yes.

24 Q. And that's the case, even though he's not
25 been suspected of committing a crime in five years 02:10

1 or more; correct?

2 A. Correct.

3 Q. Why don't we mark -- I'm going to mark
4 another exhibit here.

5 Before I do that, is it consistent with 02:10
6 the policy of the Menlo Park Police Department to
7 maintain a file on a protester who has not
8 protested in the city for more than five years?

9 A. When we're being sued in federal court, it
10 is; we don't destroy anything. 02:11

11 Q. And you continued to maintain the file
12 between 2014 and 2017; correct?

13 A. Correct.

14 Q. And during that time, you were not being
15 sued, were you, by Mr. Zeleny? 02:11

16 A. No, but there was a process of trying to
17 obtain a special events permit and then a film
18 permit during that time.

19 Q. Did your personal file about Mr. Zeleny
20 pertain to the film permit or the special events 02:11
21 permit?

22 A. There was documents, e-mails that I
23 printed out, and that would go into that file.

24 Q. Did your past interactions with and
25 knowledge about Mr. Zeleny impact the special 02:12

1 events permitting process?

2 MR. MASTER: Objection. Vague and
3 ambiguous and overbroad.

4 Go ahead.

5 THE WITNESS: I never had any face-to-face 02:12
6 contact with Mr. Zeleny prior to the hearing at the
7 city managers's level. And I have no feelings at
8 all regarding Mr. Zeleny.

9 BY MR. ROBINSON:

10 Q. Okay. Did your past knowledge of 02:12
11 Mr. Zeleny and the past dealings with the Menlo
12 Park Police Department with Mr. Zeleny impact his
13 special events permit process?

14 A. Only from the perspective of historical
15 knowledge of what he has done in the past and to 02:12
16 put that into perspective as a special event, what
17 was contemplated in the special event permit.

18 Q. How did your historical knowledge of what
19 Mr. Zeleny had done in the past put into context
20 the special event permit application? 02:13

21 A. It went towards trying to understand what
22 it was that he was attempting to do. Many of his
23 e-mails were somewhat convoluted and rambling, and
24 it was sometimes difficult to understand him. So
25 using the historical perspective, it was easier to 02:13

1 put into perspective what exactly was he looking to
2 get the permit to do.

3 (Plaintiff's Exhibit 261 marked
4 for Identification.)

5 BY MR. ROBINSON: 02:13

6 Q. All right. So I've marked as Exhibit 261
7 a multiple-page document, three pages, MP 219
8 through 221. Is that accurate?

9 A. Yes.

10 Q. Do you recognize this document? 02:13

11 A. I recognize it. I recognize it as an
12 e-mail.

13 Q. It's a chain of e-mails, including you;
14 right?

15 MR. MASTER: Which e-mail are you looking 02:14
16 at?

17 MR. ROBINSON: I'm looking at the chain of
18 e-mails that we've marked as Exhibit 261.

19 THE WITNESS: It is a thread of e-mails,
20 that's correct. 02:14

21 BY MR. ROBINSON:

22 Q. And these e-mails relate to launching a
23 new special event permit process within the City of
24 Menlo Park; correct?

25 A. That's correct. 02:14

1 Q. Was there a team within the City of Menlo
2 Park responsible for putting in place this new
3 special event process?

4 A. Yes.

5 Q. Who was on that team, to your knowledge? 02:14

6 A. The people that are listed in the e-mail.

7 Q. So you were on the team that was involved
8 in developing the new process?

9 A. I was on the -- I wasn't on the team per
10 se, but I was asked for opinions about the process, 02:14
11 as I had brought up issues about past permits that
12 had been given for certain events, like birthday
13 parties that were closing down streets. So I
14 was -- although not on the committee per se, I was
15 asked for my opinion as the police commander. 02:15

16 Q. Was Sergeant Kaufman on the committee?

17 A. Yes. She was our representative on the
18 committee.

19 Q. Was Mr. Zeleny ever discussed in
20 connection with setting up this new special event 02:15
21 process?

22 A. No, never.

23 Q. Do you know when the new special events
24 process was first published on the City's website?

25 A. I don't recall. 02:15

1 Q. Are you aware of any changes to the City's
2 website, as related to special events permits,
3 during Mr. Zeleny's prosecution?

4 A. Not that I'm aware of.

5 Q. I'm going to go ahead and take a look 02:15
6 at -- I'm copying a document to the "Marked
7 Exhibits" folder. The document name is "Special
8 Events Flowchart," Exhibit 30.

9 A. I see it.

10 Q. This was previously marked at your prior 02:16
11 session of the deposition. But you recognize this
12 to be the flowchart for how special events permits
13 are handled within the City of Menlo Park; correct?

14 A. Correct.

15 Q. And it looks like this version, if you go 02:17
16 to the last page at the very bottom, was updated
17 July 24, 2014?

18 A. That's what the document says.

19 Q. Has the process reflected in this
20 flowchart been the process in place since 2014? 02:17

21 A. I don't know.

22 Q. Reviewing this document, is it consistent
23 with how the process is handled currently?

24 A. I don't know the answer to that. Many of
25 these people who are on here don't work for the 02:17

1 City of Menlo Park anymore.

2 Q. Was this the process that was in place
3 when the City was processing Mr. Zeleny's permit
4 application?

5 A. To the best of my recollection, it was. 02:17

6 Q. I'm going to -- I'm going to now open
7 another previously marked exhibit. So I've added a
8 new document, "Special Events Permit FAQ." It
9 looks like this was previously marked as Exhibit 33
10 in your prior deposition. 02:18

11 A. It's at the bottom of the list. I do see
12 it now.

13 Q. Is this the City's published frequently
14 asked questions for the special events permit
15 process? 02:19

16 A. As of the time it was printed, yes.

17 Q. Was this the FAQ at the time of
18 Mr. Zeleny's application?

19 A. To the best of my recollection -- well,
20 this document was updated July of 2016. So I'm not 02:19
21 sure which document -- FAQs were up on the website
22 at the time of the -- of his application.

23 Q. So let's go to MP 1820, if you could.

24 A. Okay.

25 Q. Under the section "What if my permit is 02:19

1 denied," it says, "Determination of the approval or
2 denial of any application is at the discretion of
3 the special event permit committee."

4 Do you see that?

5 A. Are you talking, like, the last paragraph? 02:20
6 "What if my permit is denied?"

7 Q. Correct.

8 A. I see that.

9 Q. Was it true, at the time that Mr. Zeleny
10 applied for a special event permit, that the 02:20
11 approval or denial of his permit was at the
12 discretion of the special event permit committee?

13 A. Yes.

14 Q. What limits were there on the discretion
15 of the special event permit committee to approve or 02:20
16 deny Mr. Zeleny's application?

17 MR. MASTER: Objection. Vague and
18 ambiguous. Overbroad. Lacks foundation. Calls
19 for speculation.

20 You can answer. 02:21

21 THE WITNESS: If I -- you need to repeat
22 that question. I didn't get it.

23 BY MR. ROBINSON:

24 Q. Let me ask a slightly different question.

25 Were there any written policies that 02:21

1 you're aware of that governed how the special event
2 permit committee would exercise its discretion on
3 permit applications?

4 MR. MASTER: Objection. Vague and
5 ambiguous. Overbroad. 02:21

6 You can answer.

7 THE WITNESS: The documents all speak for
8 themselves. We've provided all the documents that
9 would be involved in this decision-making process.

10 BY MR. ROBINSON: 02:21

11 Q. Are there any -- other than the documents
12 you've provided, are there any other guidelines
13 governing how the special event permit committee
14 would exercise discretion as to special event
15 permits during the period that Mr. Zeleny was 02:21
16 applying for a permit?

17 A. Well, certainly there would be other --
18 other laws, whether they be local, state, federal
19 laws, that could impact whether or not the special
20 events committee were to deny or approve, and those 02:22
21 would be, you know, written. There's no unwritten
22 rules as far as this goes, but, again, it's really
23 based on a case-by-case basis.

24 Q. When this -- this document refers to a
25 special events permit committee. What was that 02:22

1 committee?

2 A. It was -- it's a representative from each
3 department in the City.

4 Q. And how are the representatives selected
5 to serve on that committee? 02:22

6 A. By the departments themselves, by the
7 department head or me.

8 Q. Were you ever on the special events permit
9 committee?

10 A. As I stated already, I was not on the 02:23
11 committee itself, but I was -- I did give input to
12 the original committee that was putting together
13 the criteria for special events permits.

14 Q. We talked a lot last time about what
15 qualifies as a special event. Do you recall that? 02:23

16 A. I do.

17 Q. Who makes the decision, in reviewing a
18 permit application, about whether the event is a
19 special event?

20 A. Normally, it would be the special events 02:23
21 committee.

22 Q. That's the group of people from each
23 department?

24 A. Correct.

25 Q. Who in that group, if anyone, decided that 02:23

1 Mr. Zeleny didn't qualify for special events?

2 MR. MASTER: Objection. Vague and
3 ambiguous.

4 MR. ROBINSON: Let me ask you a different
5 question. 02:23

6 BY MR. ROBINSON:

7 Q. At some point, the City determined that
8 Mr. Zeleny's permit didn't qualify as a special
9 event; correct?

10 A. Correct. 02:24

11 Q. Who made that determination for the City?

12 A. That was the city attorney's office.

13 Q. How did the city attorney's office get
14 involved in Mr. Zeleny's permit application?

15 A. Because they are also a City department, 02:24
16 and there were legal questions that needed to be
17 answered and legal advice that needed to be given.
18 So we went to the -- our legal advisors, who are
19 the city attorneys.

20 Q. Are you aware of any other permit 02:24
21 applications where the city attorney's office has
22 been consulted?

23 A. I'm aware of a few.

24 Q. Can you estimate how many?

25 A. Less than six. 02:24

1 Q. Let's take a look at -- before we go on,
2 actually, do you know who first contacted the city
3 attorney's office to get feedback on Mr. Zeleny's
4 permit application?

5 A. I don't recall who contacted them first. 02:25

6 Q. So I've added a previously marked exhibit.
7 The name is 1507170 Zeleny Initial Application, 95.
8 It's a document that was previously marked as
9 Exhibit 95.

10 Has it come up on your screen yet? 02:26

11 A. Not yet. Okay. I got it. 1507170?

12 Q. Correct.

13 A. Okay.

14 Q. For the record, it's multiple pages, MP
15 234 through MP 240; correct? 02:26

16 A. Yes.

17 Q. Do you recognize this?

18 A. I recognize it as an e-mail with a special
19 events application attached.

20 Q. The e-mail is an e-mail from Mr. Zeleny; 02:26
21 correct?

22 A. Well, I don't know who that e-mail address
23 belongs to, but it says "on behalf of Michael
24 Zeleny."

25 Q. Okay. And if you go to page MP 236, it 02:27

1 appears to be a special event application; is that
2 correct?

3 A. That is correct.

4 Q. And the applicant name there is Michael
5 Zeleny? 02:27

6 A. Correct.

7 Q. Do you recognize this to be Mr. Zeleny's
8 special event permit application from 2015?

9 A. Yes.

10 Q. And if you go through the application 02:27
11 itself, it appears that Mr. Zeleny has filled in
12 all of the boxes and questions on the permit
13 application; correct?

14 MR. MASTER: Read through the entire
15 document. 02:27

16 THE WITNESS: I'm going to have to read
17 through the entire document.

18 MR. ROBINSON: That's fine.

19 BY MR. ROBINSON:

20 Q. The question is just, are all the boxes 02:28
21 filled out and all the questions answered?

22 A. Then my answer would be it's not 100
23 percent completely filled out.

24 Q. What is missing?

25 A. Teardown, cleanup. 02:28

1 Q. Okay. Other than teardown, cleanup, is it
2 missing any other required information?

3 A. The question, "Event is recurring more
4 than annually" is not checked yes or no.

5 Q. Okay. Anything else? 02:29

6 A. And I don't see a detailed outline of the
7 event site. On page Bates No. MP 238 at the top,
8 Section 3, it specifies, "Please provide a detailed
9 site plan route map of the event on a separate
10 sheet." And I don't see that attached to this. 02:29
11 Aside from that, it's completely filled out.

12 Q. In 2015, if an applicant for a special
13 event permit submitted an incomplete application,
14 what was the process for getting more information?

15 A. That would be something that community 02:30
16 services -- whoever is in charge of the process
17 would have to request that information.

18 Q. And how would they go about requesting
19 more information?

20 A. Any way they could contact the person, 02:30
21 e-mail, phone, in person. It depends on the
22 situation.

23 Q. Let's take a look at Exhibit 30 again in
24 the same "Marked Exhibits" folder.

25 A. Okay. 02:30

1 MR. MASTER: What was that one called,
2 again; Exhibit 30?

3 MR. ROBINSON: Special Event Flowchart.

4 THE WITNESS: Yes.

5 BY MR. ROBINSON: 02:31

6 Q. So under the section "More Information
7 Needed," do you see that?

8 A. Yes.

9 Q. So let's actually go up to "Application
10 Received, Step B." If it's an incomplete 02:31
11 application, Mr. Milde is supposed to respond to
12 the applicant, correct, under the ordinary process
13 as it was in effect in 2015?

14 A. I don't believe it actually says that. It
15 says whether it's approved or not approved. I 02:31
16 don't see "More Information Needed" until down --
17 the first time you had me look for it. I don't see
18 "More Information Needed" on the bottom.

19 Q. All right. Fair enough.

20 So in the "More Information Needed" 02:32
21 section, if more information is needed, the
22 flowchart suggests that Matt Milde will confirm a
23 meeting time with the applicant.

24 Do you see that?

25 A. Yes. 02:32

1 Q. Was that the ordinary process for
2 requesting more information from an applicant in
3 2015?

4 A. Yes.

5 Q. Was that process followed in Mr. Zeleny's 02:32
6 case?

7 A. To the best of my recollection, it was.
8 Someone from the City requested more information.
9 I'm not sure who it was.

10 Q. Did Mr. Milde, to your knowledge, reach 02:32
11 out to Mr. Zeleny to set up a meeting?

12 A. I don't know.

13 Q. Did you participate in any meeting?

14 A. With whom?

15 Q. With Mr. Zeleny and Mr. Milde. 02:32

16 A. No.

17 Q. Do you know if anyone else at the police
18 department participated in a meeting with Mr. Milde
19 and Mr. Zeleny?

20 A. No. 02:33

21 Q. Do you know whether anyone at the City of
22 Menlo Park tried to set up a meeting with
23 Mr. Zeleny to get more information about his
24 application?

25 A. I believe the request for more information 02:33

1 was done via e-mail.

2 Q. Okay. Do you know if anyone tried to set
3 up a meeting with Mr. Zeleny to get more
4 information?

5 A. I don't know. 02:33

6 Q. Part of the ordinary process to get more
7 information is to set up a meeting; right?

8 A. According to the flowchart, yes.

9 Q. According to the written flowchart,
10 Mr. Milde is supposed to confirm a meeting time 02:33
11 with the applicant to get more information;
12 correct?

13 MR. MASTER: Objection. That misstates
14 the document.

15 THE WITNESS: There's a detailed -- 02:34
16 according to this flowchart, there's a detailed
17 review of the application, and it says "Matt Milde
18 confirms the meeting time with the applicant." The
19 documents speak for itself.

20 BY MR. ROBINSON: 02:34

21 Q. Does the document describe the ordinary
22 process for permit applications in 2015 when
23 Mr. Zeleny applied for a permit?

24 MR. MASTER: Objection. Asked and
25 answered. Argumentative. Vague and ambiguous. 02:34

1 Overbroad.

2 Go ahead.

3 THE WITNESS: Yes.

4 BY MR. ROBINSON:

5 Q. And part of the ordinary process of 02:34
6 processing a permit application when Mr. Zeleny
7 applied was if more information was needed,
8 Mr. Milde would confirm a meeting time with the
9 applicant; correct?

10 MR. MASTER: Objection. Vague and 02:34
11 ambiguous and overbroad. Misstates the document.

12 Go ahead.

13 THE WITNESS: Somehow, if more information
14 was needed, someone would have to recontact the
15 applicant in some fashion or manner and get that 02:34
16 information. And that's what I believe this
17 document is saying on its face.

18 BY MR. ROBINSON:

19 Q. The section there is headed "Meeting With
20 Applicant"; correct? 02:35

21 A. I see that. Yes.

22 Q. Does that suggest to you that the written
23 policy of the City of Menlo Park, if more
24 information was needed, was to set up a meeting
25 with the applicant? 02:35

1 A. I disagree. No. A meeting in and of
2 itself could be on the phone. It could be -- it
3 could be via e-mail. It doesn't necessarily have
4 to be a face-to-face meeting, no.

5 Q. So your interpretation of the flowchart 02:35
6 published by the City of Menlo Park is that
7 "meeting with applicant" could mean a phone call or
8 e-mail?

9 A. Certainly. It's gathering more
10 information. That's what the whole purpose of 02:35
11 "more information needed" means.

12 Q. And when it says "Mr. Milde confirms
13 meeting time with applicant" under the box below
14 that, that means he confirms the meeting time of an
15 in-person meeting or a phone call or an e-mail? 02:36

16 A. If more information is needed, Matt Milde
17 is the person who is going to get that information.
18 Yes, it would be Matt Milde in most cases that
19 would be asking for more information, whether it be
20 in person, by phone, via e-mail or any other method 02:36
21 of communication.

22 Q. And the next bullet point, "Team meets
23 with applicant to review details." In your view of
24 this policy of the City of Menlo Park, that could
25 mean an in-person meeting, a phone call or an 02:36

1 e-mail?

2 A. Correct.

3 Q. Did the special events permitting team
4 meet with Mr. Zeleny under any of those mechanisms,
5 to your knowledge? 02:36

6 A. Yes. There was numerous exchanges of
7 e-mails with Mr. Zeleny, requesting more
8 information, by both the community services
9 department and the city attorney's office.

10 Q. Did the other city departments that are 02:37
11 part of the special events permit team participate
12 in this?

13 A. Not that I'm aware of.

14 Q. Are you aware of any phone calls with
15 Mr. Zeleny, prior to the initial denial of this 02:37
16 permit, about the permit?

17 A. I don't know -- I don't know of any phone
18 calls.

19 Q. And are you aware of any attempts to
20 arrange phone calls or in-person meetings with 02:37
21 Mr. Zeleny before the denial of his permit?

22 A. Based on the fact that he was in Southern
23 California, no.

24 Q. Is -- okay. Do you know if anyone at the
25 City of Menlo Park asked Mr. Zeleny if he'd like to 02:37

1 attend an in-person or telephone meeting?

2 A. I don't know if anybody asked that
3 question.

4 Q. When those e-mail meetings took place, had
5 the City determined whether to grant or deny 02:38
6 Mr. Zeleny's application?

7 A. I don't know. I don't know the timing of
8 it.

9 MR. MASTER: Vague and ambiguous.

10 BY MR. ROBINSON: 02:38

11 Q. Do you recall the City requesting more
12 information from Mr. Zeleny after having already
13 made a determination to deny his application?

14 A. I don't recall.

15 Q. Do you recall any reason for asking 02:38
16 Mr. Zeleny for more information after the City had
17 already decided to deny his application?

18 A. I believe that based on the application as
19 it stood, it would have been -- it was going to be
20 denied, but if Mr. Zeleny answered the questions 02:39
21 that were asked via e-mail by the city attorney's
22 offices and community services department, then the
23 application could be modified or mitigation could
24 be put into it that would allow it to be, in fact,
25 permitted or approved. 02:39

1 Q. What information could Mr. Zeleny have
2 provided to you that would have caused the City to
3 grant his permit application?

4 A. Nothing, to me. I am not the decision
5 maker on whether a permit is approved or denied. 02:39
6 It was the city attorney's office that was asking
7 for more specific details that can be found in the
8 e-mail exchange with Mr. Zeleny. I don't have
9 independent recollection, as I sit here today,
10 about every single piece of information that was 02:39
11 asked.

12 Q. Did the city attorney's office make the
13 decision to deny Mr. Zeleny's permit application?

14 A. No. Originally, it was the community
15 services department that made that decision. 02:39

16 Q. How did the community services department
17 make that decision?

18 A. You would have to go back to the document
19 that was written, the letter that was written to
20 Mr. Zeleny and review that document. 02:40

21 Q. Did Mr. Milde make the decision?

22 A. I think -- I believe Mr. Milde is the one
23 who communicated the decision to Mr. Zeleny.

24 Q. So not who communicated it. Who made the
25 decision? 02:40

1 A. That would be a collective decision with
2 the city attorney's office and the special events
3 coordinator, who is Matt Milde.

4 Q. Were you involved in that discussion?

5 A. I was not involved in the discussion of 02:40
6 the decision to be made, no. From the police
7 department's perspective, I gave our concern, as I
8 testified last time we spoke, and then the city
9 attorney asked their follow-up questions and spoke
10 with Matt Milde, and the decision was made to deny 02:41
11 it as the permit was submitted.

12 Q. Are you aware of any information -- as the
13 designated person most qualified for the City of
14 Menlo Park to testify about Zeleny's permit
15 application, are you aware of any information that 02:41
16 Zeleny could have submitted in connection with his
17 initial application that would have caused it to be
18 granted?

19 A. Yes. If he had answered the questions
20 that were posed to him by the city attorney in a 02:41
21 way that satisfied them, then the permit would have
22 been issued.

23 Q. All right. I'm going to go ahead and mark
24 another exhibit.

25 What are we up to now? 02:41

1 THE REPORTER: The next one will be 262.

2 (Plaintiff's Exhibit 262 marked

3 for Identification.)

4 BY MR. ROBINSON:

5 Q. Let me know when that pops up on your 02:42

6 screen. It looks like it's a marked version.

7 That's fine.

8 MR. MASTER: Hold on a second, guys. Mine

9 is taking longer to open up.

10 BY MR. ROBINSON: 02:42

11 Q. Okay. So we've marked as Exhibit 262 a

12 three-page document, MP 258 to 260. Is that

13 accurate?

14 A. Yes.

15 Q. Do you recognize this document? 02:43

16 A. It is an e-mail.

17 Q. An e-mail that you sent; right?

18 A. Correct.

19 Q. It's an e-mail that you sent, among other

20 people, to David Tresmontan at NEA; correct? 02:43

21 A. Yes.

22 Q. And to a representative of the Rosewood

23 Hotel?

24 A. Correct.

25 Q. In the second paragraph of this e-mail, 02:43

Page 385

1 it's circled or boxed in red. You write:

2 "Although we intend to deny this application on
3 several grounds..."

4 Do you see that?

5 A. I do. 02:43

6 Q. When you wrote this e-mail to NEA and to
7 the Rosewood Hotel and others, the City of Menlo
8 Park intended to deny Zeleny's permit application;
9 correct?

10 A. Well, that was information I was given 02:43
11 from the city attorney's office based on the
12 application as it was written. If Mr. Zeleny had
13 not given responses to the questions that were
14 asked, it would be denied, that's correct.

15 MR. ROBINSON: So I'm going to object and 02:44
16 move to strike everything, other than "correct," as
17 nonresponsive.

18 BY MR. ROBINSON:

19 Q. The intention of the City of Menlo Park,
20 when you wrote this e-mail, was to deny the 02:44
21 application; correct?

22 A. This is information I received from the
23 city attorney's office.

24 Q. The information you received from the city
25 attorney's office was that the City of Menlo Park 02:44

1 intended to deny the application; correct?

2 A. Intended to deny the application as it
3 stood at that time.

4 Q. Okay. So in parentheses, following that
5 statement, you say "Predominantly, this is not a 02:44
6 special event, as defined by the City." Do you see
7 that?

8 A. I do.

9 Q. What additional information about his
10 event could Mr. Zeleny have provided to make it a 02:44
11 special event, as defined by the City?

12 A. This was something that came from the city
13 attorney's office. This is one of the things that
14 they stated about it. So this was their
15 determination, not mine. 02:45

16 Q. Do you know what they relied on to decide
17 that it wasn't a special event?

18 A. No.

19 Q. Do you agree that it wasn't a special
20 event? 02:45

21 MR. MASTER: Objection. Asked and
22 answered last time, Counsel. Argumentative.

23 Go ahead.

24 THE WITNESS: Based on the criteria of the
25 FAQs, technically, it would be a special event. 02:45

1 The only concern or the issue, in my opinion, would
2 be the initial application that made it indefinite.
3 If it's indefinite ongoing, then we're selling this
4 person land to do whatever they want for the rest
5 of time. So in that case, it would be difficult to 02:45
6 describe it as a, quote, unquote, special event.

7 BY MR. ROBINSON:

8 Q. Is that factor, limited time duration, set
9 out in any City policy or procedure?

10 MR. MASTER: Objection. Asked and 02:45
11 answered.

12 THE WITNESS: Time, place and manner are
13 the things that the City would be looking at, and
14 when you're talking about time, indefinite --
15 although there's nothing written specifically about 02:46
16 how long a special event can occur, indefinite, in
17 my opinion, is not appropriate. That would be
18 forever.

19 BY MR. ROBINSON:

20 Q. Whether an event is indefinite, is that 02:46
21 one of the written factors anywhere in the City's
22 determination of special event permits?

23 A. As I stated today and the last time we
24 spoke, there is nothing written about how long a
25 special event may go on. The point is that when it 02:46

1 is, in fact, being indefinite, that creates a whole
2 other issue regarding whether or not this permit
3 could be, in fact, allowed.

4 Q. In the same paragraph, you note, Although
5 we, meaning the City, intend to deny this 02:46
6 application on several grounds, we were in the
7 process of requesting more information from him on
8 the exact location he was intending, as it is not
9 clear on the application.

10 Do you see that? 02:47

11 A. Yes.

12 Q. Is this consistent with your understanding
13 at the time, that the City intended to deny the
14 application but was going to request additional
15 information from Mr. Zeleny about the location? 02:47

16 A. The City was going to deny the application
17 based on the application as it stood at that time,
18 with the caveat that they were going to be asking
19 for further information that if Mr. Zeleny
20 provided, we could go forward with the application 02:47
21 process.

22 Q. Would the exact location of the event make
23 it a special event somehow?

24 MR. MASTER: Confusing and unintelligible.
25 Vague and ambiguous. 02:47

1 THE WITNESS: I don't understand what
2 you're asking there.

3 BY MR. ROBINSON:

4 Q. Okay. So the intention on the part of the
5 City at this point was to deny the application 02:47
6 because it wasn't a special event; right?

7 MR. MASTER: Misstates his testimony.
8 Go ahead.

9 THE WITNESS: That was one issue. The
10 rest of the issues were communicated to Mr. Zeleny. 02:48

11 BY MR. ROBINSON:

12 Q. Would the exact location of the event
13 change whether or not it met the definition of a
14 special event?

15 A. The exact location of the event is 02:48
16 required by the permit. It doesn't matter whether
17 it's a special event or not. It's one of the
18 things we need to know, is exactly where it's going
19 to occur, or we cannot process the permit
20 correctly. 02:48

21 Q. So regardless of with how much specificity
22 Mr. Zeleny advised of his location, he still
23 wouldn't qualify as a special event; correct?

24 MR. MASTER: Vague and ambiguous and
25 overbroad. Confusing and unintelligible. 02:48

1 THE WITNESS: I don't know how to answer
2 that. I don't know how to answer that.

3 BY MR. ROBINSON:

4 Q. So what information could Mr. Zeleny have
5 given you in July of 2015 about the exact location 02:49
6 of his event that would have made it qualify as a
7 special event?

8 MR. MASTER: Objection. Confusing.
9 Unintelligible. Vague and ambiguous and overbroad.

10 THE WITNESS: The location or lack of 02:49
11 specific location does not correlate to whether
12 it's a special event or not. I don't understand
13 where you're going with this, what you're asking.
14 We're asking for specific -- specific location, as
15 is required by the application, so we can take 02:49
16 steps to determine whether or not we could approve
17 the permit. That has nothing to do as to whether
18 it's a special event or not. So I'm not sure why
19 you're trying to equate those.

20 BY MR. ROBINSON: 02:49

21 Q. At this point in July of 2015, the City
22 already intended to deny Mr. Zeleny's permit
23 application; correct?

24 MR. MASTER: Objection. Asked and
25 answered, Counsel. Enough. 02:50

1 One more time, answer it, and we're done
2 with that question.

3 MR. ROBINSON: You can go ahead and
4 answer.

5 MR. MASTER: One more time and we're done 02:50
6 with that question, Counsel.

7 THE WITNESS: As I've stated several times
8 now, that at the time, the city attorney, based on
9 how the application stood at that moment, was
10 planning on denying it but was asking for further 02:50
11 information, that if that information had come in
12 and we could continue it, then the permit could
13 have gone on.

14 BY MR. ROBINSON:

15 Q. If Mr. Zeleny had provided the information 02:50
16 that you're referring to in this e-mail, about the
17 exact location he was intending, would the permit
18 have been granted?

19 A. Again, I don't understand how you're
20 trying to equate the location with it being a 02:51
21 special event. The specific location was one piece
22 of information, just one, that was being requested
23 by the city attorney's office.

24 There was other information that was also
25 requested. It just so happens that I said 02:51

1 something about it in this e-mail, but that was
2 just one piece of information that was being
3 requested because we needed to know, if we were
4 going to grant a permit to him, the exact location
5 of where he wants to do what he wants to do. 02:51

6 Q. What information could -- at this time in
7 July 2015, what information could Mr. Zeleny have
8 given the City that would have resulted in his
9 application being granted?

10 A. The information that the city attorney's 02:51
11 office asked him for in -- I believe it was an
12 e-mail or letter.

13 Q. If Mr. Zeleny had given the city attorney
14 the information that the city attorney asked for,
15 would his application have been approved? 02:52

16 A. It may have been. I don't know. I
17 can't -- I can't speculate as to what information
18 he'd give us.

19 Q. In the first paragraph of this e-mail, you
20 start out by saying, "As you are aware, Michael 02:52
21 Zeleny is submitting an application." Do you see
22 that?

23 A. Yes.

24 Q. Did you have any previous communications
25 with the people on this e-mail about Mr. Zeleny's 02:52

1 application?

2 A. I didn't. Mr. Zeleny did.

3 Q. Why did you contact the people on this
4 e-mail thread to -- strike that.

5 Why did you advise the people on this 02:52
6 e-mail thread that the City intended to deny the
7 application?

8 A. Because that is what I was told by the
9 city attorney's office at the time.

10 MR. MASTER: Hold on. I'll move to 02:52
11 strike. It's attorney-client-privileged
12 communication. Move to strike that testimony as
13 attorney-client-privileged communication. Any
14 communication he received from the city attorney's
15 office is barred and confidential. 02:53

16 BY MR. ROBINSON:

17 Q. So without telling me anything that the
18 city attorney told you -- and I'm not concerned
19 about the substance of your communications with the
20 city attorney -- why did you decide to send this 02:53
21 e-mail that we're looking at, Exhibit 262?

22 A. Because these are the people who were
23 stakeholders in the original issues with
24 Mr. Zeleny, both at NEA, Rosewood, who were the two
25 largest entities that had concerns about him coming 02:53

1 to the property and protesting armed.

2 The other folks are all law enforcement
3 folks who also would deal with Mr. Zeleny because
4 his protests went outside of Menlo Park. So there
5 are representatives from the sheriff's office, the 02:54
6 district attorney's office and also my other
7 command staff members, the commander and a chief.

8 Q. I'm going to move in an exhibit now that's
9 been previously marked. This is Exhibit -- so the
10 file name is 150722, Bertini Meeting, 81. 02:55

11 A. Okay.

12 Q. For the record, it's MP 266 through 274;
13 right?

14 A. Correct.

15 Q. And this is an e-mail you sent out to 02:55
16 various people with the subject line "Open Carry
17 Suspect - Michael Zeleny"?

18 A. Yes. I sent the e-mail. The recipients
19 are the District Attorney Steve Wagstaffe,
20 Assistant District Attorney Karen Guidotti and 02:55
21 Assistant District Attorney Al Serrato, along with
22 the city attorney, Bill McClure, and my police
23 chief, Robert Jonsen, at the time.

24 Q. So I want to talk about the third
25 paragraph. Strike that. 02:56

1 In this e-mail, you refer to an open-carry
2 suspect. Do you see that?

3 A. Yes.

4 Q. What was Mr. Zeleny suspected of at the
5 time of this e-mail? 02:56

6 A. Nothing that I was aware of.

7 Q. In the third paragraph of this e-mail, it
8 starts off with, "In discussions with our City
9 Attorney Bill McClure, we are sure we are on solid
10 ground to deny his application." 02:56

11 Do you see that?

12 A. I do.

13 Q. Had the City made a decision at this point
14 that it was going to deny Mr. Zeleny's application?

15 A. At the time of the writing of this e-mail, 02:57
16 as the application stood, the answer is yes.

17 Q. And the reason, again, is because it did
18 not comply with the City definition of a special
19 event; correct?

20 A. That was one -- one reason that the city 02:57
21 attorney -- city attorney's office had, but there
22 were several other reasons, also.

23 Q. And in this e-mail, you notified this
24 group that you will complete appropriate due
25 diligence and notify him, meaning Zeleny, of the 02:57

1 denial; right?

2 A. Where does it say that?

3 Q. In the same paragraph. "After completing
4 the appropriate due diligence, we will notify him
5 of the denial." 02:57

6 A. Yes.

7 Q. So the plan at this point for the City was
8 to do what would be considered appropriate due
9 diligence and then notify Mr. Zeleny of the denial
10 of his application; correct? 02:58

11 A. No. The plan was to ask the questions
12 that were asked of him in subsequent e-mails to
13 Mr. Zeleny from the city attorney's office, and if
14 the answers were not provided, then it would be a
15 denial, as the application stood at this time. 02:58

16 Q. Let's look at the third bullet point under
17 that paragraph. You asked, "Could you review the
18 image Zeleny intends to display, and in case he
19 does not have any openly carried guns, would this
20 image be illegal?" And then you cite some Penal 02:58
21 Code sections.

22 Do you see that?

23 A. I do.

24 Q. What were the images that you were
25 referring to there? 02:58

1 A. It was an animation of a sexual act.

2 Q. Did you think that the animation of the
3 sexual act was relevant to your determination about
4 whether to grant or deny the permit application?

5 A. No. It was just a legal question I was 02:59
6 asking the DA's office.

7 Q. Why were you asking the DA's office that
8 legal question?

9 A. Because I didn't know the answer to it.

10 Q. For what purpose did you need an answer to 02:59
11 that question?

12 A. Because if he intended to display
13 something and we had a victim who reported that
14 their child was somehow harmed or exposed to this,
15 we would need to know how to act from the DA's 02:59
16 perspective.

17 This is not something that we, as police
18 officers, come across every day. So we were asking
19 for legal advice from our DA's office, who would be
20 the final arbiter of whether charges were filed or 02:59
21 not.

22 Q. Did the DA's office respond to your
23 question?

24 A. It did.

25 Q. What did they say? 02:59

1 A. They basically said it would have to be a
2 case-by-case basis, and if a case was submitted to
3 them, they would review it.

4 Q. Did they tell you that in their opinion,
5 it wasn't illegal, in all likelihood? 03:00

6 A. I don't -- I don't recall exactly what
7 they said.

8 Q. Did they say words to the effect -- say or
9 write words to the effect that their view was that
10 it was probably not illegal? 03:00

11 A. I don't recall that.

12 Q. I'm going to go ahead and mark the next in
13 order.

14 (Reporter clarification.)

15 (Plaintiff's Exhibit 263 marked
16 for Identification.)

17 BY MR. ROBINSON:

18 Q. I've marked Exhibit 263. It's a
19 multiple-page document, MP 296 through MP 300;
20 correct? 03:01

21 A. Correct.

22 Q. This is from Al Serrato to you and others;
23 right?

24 A. Yes.

25 Q. It appears to be a response to your e-mail 03:01

1 of July 22nd, 2015; right?

2 A. That's correct. It's dated July 28th.

3 Q. So if you go down to the third paragraph
4 of Mr. Serrato -- Mr. Serrato was a deputy DA at
5 the time; correct? 03:02

6 A. He was the assistant district attorney.

7 Q. Assistant district attorney. Okay.

8 And he says -- he's discussing your
9 question about the image in the fourth paragraph of
10 his e-mail. 03:02

11 A. Yes.

12 Q. And he suggests that whether the cartoon
13 would be encompassed by the Penal Code section you
14 cite is not entirely clear to me, but he suspects
15 it wouldn't; correct? 03:02

16 A. He says he suspects it would not down in
17 the paragraph, but at the beginning, he says
18 section 647(j)(4) is a relatively new law, and
19 there is not a lot of guidance as to the extent of
20 its application. 03:03

21 Again, another reason why we were asking
22 the DA's office for their opinion.

23 Q. And the opinion relayed by Mr. Serrato in
24 this e-mail is that the image that you showed him
25 likely would not fall within Penal Code 647(j)(4); 03:03

1 right?

2 A. No.

3 MR. MASTER: Objection. That misstates
4 the document.

5 Go ahead. 03:03

6 THE WITNESS: I'm going to quote the
7 document so I'm not misstating. But it says,
8 quote, But I suspect it would not, end quote.

9 BY MR. ROBINSON:

10 Q. Did you follow up with Mr. Serrato about 03:03
11 what he meant by this?

12 A. It was pretty obvious what he meant by it.

13 Q. What did he mean by it, in your
14 understanding?

15 A. It speaks for itself. By the document, he 03:03
16 suspects it would not be, but in the end, if we had
17 a victim who reported that they were somehow
18 injured by this image, being underage, that we
19 could write a report and send it to the DA, and
20 they would determine whether to prosecute or not. 03:04

21 Q. Do you know if, at the time of July 22nd,
22 2015, the e-mail that we looked at a couple of
23 exhibits ago, whether the City had contacted
24 Mr. Zeleny in any way about his permit application?

25 A. I don't know the timing of the contacts, 03:04

1 no.

2 Q. Did you eventually have a meeting with
3 various stakeholders about the permit application?

4 A. I don't recall whether it was specifically
5 about his permit application. I recall having a 03:05
6 meeting with several stakeholders in case -- to
7 discuss what would happen in case he did appear
8 again and protest while armed.

9 Q. Who participated in that meeting?

10 A. I can't recall without looking at the 03:05
11 document itself.

12 Q. Did a representative of NEA participate at
13 the meeting?

14 A. I believe so.

15 Q. And a representative of the Rosewood 03:05
16 Hotels?

17 A. Yes.

18 Q. Was Mr. Zeleny asked to participate in
19 that meeting?

20 A. No. 03:05

21 MR. MASTER: We've been going for about an
22 hour. Can we take a five-minute break?

23 MR. ROBINSON: Yeah. Now is a good time.
24 So we'll go off the record for five minutes.

25 THE VIDEOGRAPHER: Going off the record. 03:06

1 The time now is 3:06.

2 (Off the record.)

3 THE VIDEOGRAPHER: Back on the record.

4 The time now is 3:13.

5 BY MR. ROBINSON: 03:13

6 Q. Chief Bertini, how long have you been in
7 the law enforcement profession?

8 A. Over 33 years.

9 Q. Throughout those 33 years, have you dealt
10 with district attorneys the entire time? 03:13

11 A. Yes.

12 Q. Have you consulted with district attorneys
13 for their input about legal matters from time to
14 time?

15 A. I would say numerous times. 03:14

16 Q. In the numerous times that you've
17 communicated with district attorneys or assistant
18 district attorneys about legal matters, have they
19 given you opinions?

20 A. Yes. 03:14

21 Q. Based on that experience, looking --
22 considering the e-mail exchange with the district
23 attorney's office that we just looked at, did you
24 form an opinion about or did you form a belief
25 about the district attorney's view of whether the 03:14

1 image that Mr. Zeleny had used in his protest was
2 illegal?

3 MR. MASTER: Objection. Lacks foundation.
4 Calls for speculation.

5 BY MR. ROBINSON:

6 Q. My question is, Chief Bertini, about your
7 own understanding, in your own mind, about what the
8 district attorney's e-mail meant. Do you think the
9 e-mail, in your own mind, expressed a view about
10 whether the image was illegal? 03:15

11 MR. MASTER: I'm going to object. It
12 lacks foundation and does call for speculation as
13 to what someone else means by what they wrote. But
14 if he had a belief on his own interpretation, he
15 can answer. 03:15

16 THE WITNESS: I believe that Al Serrato,
17 the DA in this e-mail, was basically giving his
18 opinion, but then the last line says, and I'll
19 quote, "We would of course review any case that was
20 submitted for filing, but those are my preliminary 03:15
21 thoughts on the viability of using this section."

22 So my opinion -- my opinion comes from
23 that statement.

24 BY MR. ROBINSON:

25 Q. What was your view -- what was your 03:16

1 understanding of Mr. Serrato's preliminary opinion
2 of whether the image was illegal?

3 MR. MASTER: Objection. The document
4 speaks for itself. Lacks foundation. Calls for
5 speculation.

03:16

6 If you know.

7 THE WITNESS: Well, the document states he
8 suspected it wouldn't be, but, again, what he said
9 was, as I stated originally before we saw the
10 e-mail, is that if you send a case to us, submit
11 the case for us to review, and, of course, we will
12 review it based on the totality of their
13 circumstances.

03:16

14 (Plaintiff's Exhibit 264 marked
15 for Identification.)

03:16

16 BY MR. ROBINSON:

17 Q. Let's take a look at Exhibit 264, which
18 would be in the "Marked Exhibits" folder. It's a
19 multiple-page document, MP 5326 through 5337.

20 A. Okay.

03:17

21 Q. Do you recognize this document?

22 A. It an agenda for a meeting.

23 Q. Did you participate in preparing this
24 agenda?

25 A. Yes.

03:17

1 Q. Did you participate in selecting the
2 materials to include with this agenda?

3 A. Yes.

4 Q. Did you select the materials to include?

5 A. Yes. 03:17

6 Q. One of the materials that you included was
7 Mr. Zeleny's permit application; correct?

8 A. Correct.

9 Q. Let me step back a second. This was the
10 meeting with NEA, the Rosewood Hotel and various 03:17
11 other stakeholders relating to Mr. Zeleny's
12 protests; right?

13 A. There was numerous entities, including
14 Stanford, one of the other venture capitalist
15 companies in that complex and all the law 03:18
16 enforcement stakeholders.

17 Q. And the participants in the meeting also
18 included NEA and the Rosewood Hotel; right?

19 A. Correct.

20 Q. At the time that you had this meeting with 03:18
21 those various stakeholders, was Mr. Zeleny's permit
22 application still pending?

23 A. I don't recall exactly when the denial
24 letter went out, so I don't recall as I sit here
25 today. 03:18

1 Q. So let's go down to page 5331. It looks
2 like an image from a website; is that right?

3 A. I couldn't tell you where the image is
4 from, but it is an image, yes.

5 Q. It's the same image that you were asking 03:19
6 the DA's office about?

7 A. Yes.

8 Q. Why did you include this image in the
9 materials for the meeting about Mr. Zeleny?

10 A. Because that was what he intended to 03:19
11 display on the 55-inch display that he listed in
12 the application.

13 Q. How do you know that?

14 A. He told us.

15 Q. In substance, what was discussed at the 03:19
16 meeting on September 2nd, 2015 relating to
17 Mr. Zeleny?

18 A. To the best of my recollection, as I sit
19 here today, since this was five years ago, I know
20 the agenda was set to talk a little bit about 03:20
21 Mr. Zeleny's history of not only protests in Menlo
22 Park but protests around the area, both in Palo
23 Alto, Portola Valley, Menlo Park, even
24 San Francisco prior, and to discuss the application
25 for the special event and a response plan, if 03:20

1 Mr. Zeleny were to show up with his weapons during
2 this time in 2015, and to let the -- all the
3 stakeholders know, all the entities that were
4 involved, that we had an open line of
5 communication; if, in fact, that occurred, that 03:20
6 they were to call us immediately so we could assess
7 the situation.

8 And then we had a roundtable where
9 everybody spoke and asked any questions that they
10 had. I don't recall exactly what was asked, 03:20
11 though.

12 Q. In general, what did NEA's representative
13 say during the meeting?

14 A. I honestly don't remember if they even
15 spoke at all. 03:21

16 Q. Let's go to the previous page. So it's
17 page MP 5330. Do you know -- and I'm looking at
18 the "Official Use Only" box. This is what we
19 looked at in the earlier application that we talked
20 about. 03:21

21 Do you know if an initial review was ever
22 performed of Mr. Zeleny's application?

23 A. I don't know.

24 Q. Do you know if an e-mail acknowledgment
25 was ever sent to Mr. Zeleny's application? 03:21

1 A. To the best of my recollection, I believe
2 there was, from Mr. Milde.

3 Q. Do you know whether the application was
4 ever formally submitted to the permit committee for
5 approval or denial? 03:22

6 A. I don't know.

7 Q. Do you know if any of the other -- or any
8 of the departments filled out the approval section
9 of Mr. Zeleny's permit application?

10 A. Not that I'm aware of. 03:22

11 Q. Do you know if conditions of
12 approval or a denial letter was ever sent to
13 Mr. Zeleny?

14 A. Yes.

15 Q. He received a denial letter; right? 03:22

16 A. Well, he received more than just a denial
17 letter. I know there was e-mail exchanges with the
18 city attorney's office requesting further
19 information, and eventually a denial letter was
20 sent, that's correct. 03:22

21 Q. Stepping back for a second, we talked
22 about the various forms of meetings that could be
23 conducted with the applicant to get more
24 information about an application. What is the
25 typical way that the meeting with the applicant 03:23

1 occurs?

2 MR. MASTER: Vague and ambiguous.

3 Overbroad.

4 THE WITNESS: I don't know the answer to

5 that.

03:23

6 BY MR. ROBINSON:

7 Q. Who would know the answer?

8 A. Matt Milde or whoever is in that position

9 today.

10 Q. I think last time, you said you had been
11 involved in about six permit applications yourself;
12 is that right?

03:23

13 A. That's not what I said.

14 Q. How many permit applications have you been
15 directly involved in yourself for special event
16 permits?

03:23

17 A. Several. Six was the number that I dealt
18 with the city attorney's office on, but I've been
19 involved in several applications for special
20 events. I don't know the number.

03:23

21 Q. In those applications for special events
22 that you've dealt with, were meetings conducted
23 with the applicant?

24 A. Not by me.

25 Q. Do you know of meetings being conducted

03:23

1 with the applicant, whether you participated or
2 not?

3 A. Yes. There were meetings normally handled
4 via phone and/or e-mail.

5 Q. What percentage of the meetings were 03:24
6 handled via phone?

7 A. I don't know.

8 Q. Can you estimate?

9 A. I can't. I didn't have those meetings.
10 That would be done by the sergeant in charge of 03:24
11 special events.

12 Q. I'm going to go ahead and mark next in
13 order 263.

14 MR. MASTER: I see a 264 and a 263. Which
15 ones are we talking about? 03:25

16 MR. ROBINSON: I'm waiting for it to load.
17 Let's see what number is assigned to it. So we're
18 at 265, it looks like.

19 THE WITNESS: Okay.

20 (Plaintiff's Exhibit 265 marked
21 for Identification.)

22 BY MR. ROBINSON:

23 Q. For the record, Exhibit 265 is multiple
24 pages, MP 345 through MP 350; correct?

25 A. Correct. 03:26

1 Q. Do you recognize Exhibit 265?

2 A. It's an e-mail.

3 Q. It's an e-mail thread; right?

4 A. Yes.

5 Q. And the newest e-mail in the thread was 03:26
6 copied to you; correct?

7 A. Yes, I'm one of several people it was
8 copied to.

9 Q. And when the e-mail thread was copied to
10 you, you received the e-mails; correct? 03:26

11 A. Correct.

12 Q. If you go down to page MP 346, there's an
13 e-mail from William McClure starting with
14 "Michael." Do you see that?

15 A. I do. 03:26

16 Q. In this e-mail, Mr. McClure asks for
17 foundational information related to Mr. Zeleny's
18 permit application; correct?

19 A. Yes.

20 Q. Are you aware of any other requests by 03:27
21 Mr. McClure for additional information about
22 Mr. Zeleny's permit application?

23 MR. MASTER: Objection. Vague and
24 ambiguous as to time.

25 Go ahead. 03:27

1 THE WITNESS: I don't know.

2 BY MR. ROBINSON:

3 Q. Well, are you personally aware of that?

4 A. I don't know whether there were other
5 e-mails or not. You'd have to produce them for me 03:27
6 to be able to recall.

7 Q. As you sit here, you can't recall any
8 others. Is that accurate?

9 A. That's correct.

10 Q. If we go up to the first page of this and 03:27
11 then carrying over to the second, Mr. Zeleny
12 responds to Mr. McClure's questions; correct?

13 A. I see there was some response to the
14 questions, yes.

15 Q. Was the response to the questions 03:28
16 insufficient in some way?

17 MR. MASTER: Objection. Vague and
18 ambiguous. Overbroad. Compound.

19 THE WITNESS: They -- that was not --
20 these answers did not come to me. They came to the 03:28
21 city attorney. You would have to ask the city
22 attorney.

23 BY MR. ROBINSON:

24 Q. As the designated witness for the City of
25 Menlo Park, were Mr. Zeleny's responses to 03:28

1 questions incomplete?

2 MR. MASTER: Same objection.

3 THE WITNESS: I can't answer that. I
4 don't know.

5 BY MR. ROBINSON: 03:28

6 Q. Do you know if Mr. McClure followed up in
7 any way for more information?

8 A. I don't recall, as I sit here today.

9 Q. Do you know if anyone else within the City
10 of Menlo Park followed up with Mr. Zeleny for more 03:28
11 information?

12 A. I can't recall, as I sit here today.

13 Q. In the very top e-mail in the exchange
14 that was copied to you, Mr. Zeleny refers to a
15 willingness to discuss time, place and manner 03:29
16 aspects of his performance.

17 Do you see that?

18 A. I do.

19 Q. Do you know if the City of Menlo Park ever
20 suggested any time, place or manner requirements 03:29
21 that would result in the approval of Mr. Zeleny's
22 application?

23 A. I believe that the letter from the city
24 attorney's office was asking very specific
25 questions that needed to be answered, and if they 03:29

1 were answered satisfactorily to the city attorney,
2 then a permit could be, in fact, issued.

3 Q. Do you know whether the City of Menlo Park
4 ever provided any guidance to Mr. Zeleny about the
5 time, place and manner requirements so that his 03:29
6 permit would be approved?

7 A. Yes.

8 Q. When did that happen?

9 A. In the letter that came from the city
10 attorney's office to Mr. Zeleny. 03:30

11 Q. The letter denying his permit application?

12 A. I don't know if that was the denial letter
13 or if there was a letter -- I don't recall whether
14 there was a letter prior to that, but I know there
15 was a letter that was generated by the city 03:30
16 attorney's office asking for specifics.

17 Q. In the ordinary course of processing a
18 permit application, if the City needed specifics,
19 it could generally get those specifics by meeting
20 with the applicant; correct? 03:30

21 MR. MASTER: Objection. Vague and
22 ambiguous. Lacks foundation. Calls for
23 speculation. Incomplete hypothetical.

24 MR. ROBINSON: Let me rephrase.

25 BY MR. ROBINSON: 03:30

1 Q. According to the City's written policy
2 reflected in the flowchart that we looked at
3 before, if additional information was needed from
4 the applicant, it would be obtained through a
5 meeting with the applicant; correct? 03:30

6 MR. MASTER: Same objections.

7 THE WITNESS: It would be information that
8 would be obtained by the -- or obtained from the
9 applicant in some fashion, whether it was a phone
10 call, an e-mail or an in-person meeting. 03:31

11 BY MR. ROBINSON:

12 Q. Let me go ahead and introduce what I'm
13 marking as Exhibit 266. Let me know when that pops
14 up for you.

15 (Plaintiff's Exhibit 266 marked 03:31
16 for Identification.)

17 THE WITNESS: I see it.

18 BY MR. ROBINSON:

19 Q. Exhibit 266 is one page. It's Bates
20 marked NEA Subpoena 37; correct? 03:32

21 A. Yes.

22 Q. This is an e-mail from you to David
23 Tresmontan at NEA?

24 A. That's correct.

25 Q. And Mr. Tresmontan is asking you if the 03:32

1 permit denial has been sent out to Mr. Zeleny;
2 correct?

3 A. Yes.

4 Q. And at this point, as of September 21st,
5 2015, it had not yet been sent out; is that 03:32
6 correct?

7 A. Based on my e-mail, it looked like it was
8 getting sent out that day, yes.

9 Q. Did you keep Mr. Tresmontan up to date on
10 the progress of Mr. Zeleny's permit application? 03:32

11 A. No. I just answered his question.

12 Q. So I'm going to introduce a previously
13 marked exhibit here, 150924, Update to NEA, Exhibit
14 102. So this was previously marked Exhibit 102.
15 Let me know when it pops up. 03:33

16 A. I have it.

17 Q. For the record, Exhibit 102 is MP 351
18 through MP 355; correct?

19 A. Yes.

20 Q. And this is an e-mail from you to NEA, the 03:33
21 Rosewood Hotel, and others about the denial of
22 Mr. Zeleny's special event permit; correct?

23 A. This was an e-mail to almost a dozen
24 people of all entities that were at the meeting
25 that we had regarding Mr. Zeleny and the response, 03:34

1 in case he were to come without a permit, and this
2 was just updating them on the permit decision.

3 Q. The first person in the "to" line of the
4 e-mail is Mr. Tresmontan; correct?

5 A. That's correct. 03:34

6 Q. He's a representative of NEA; correct?

7 A. That's correct.

8 Q. And the second person in the "to" line is
9 Jimmy Mazon; is that correct?

10 A. Mazon, yes, from the Rosewood Hotel. 03:34

11 Q. And at this point, the denial letter has
12 gone out; correct?

13 A. That's correct.

14 Q. Is the denial letter attached to this
15 e-mail the denial letter from the city attorney's 03:35
16 office?

17 A. Yes.

18 Q. Are you aware of any other denial letter
19 sent to Mr. Zeleny on the initial permit
20 application? 03:35

21 A. I'm not aware or I don't recall any denial
22 letter, but I know there were e-mails exchanged
23 between the city attorney's office and Mr. Zeleny.

24 Q. Okay. Just focusing on the denial letter,
25 are you aware of any other denial letters going out 03:35

1 for Mr. Zeleny's original permit application?

2 A. Don't recall any other denial letters.

3 Well, actually, I do recall -- I believe there was
4 a denial letter that came from community services,
5 by Matt Milde. 03:35

6 Q. Was that before or after this letter?

7 A. I don't remember. I don't recall when
8 that was sent.

9 Q. Do you recall there being one denial
10 letter from community services or multiple? 03:36

11 A. I believe there was one initial and then a
12 second denial letter by the department director.

13 Q. Okay. Is this the letter that you're
14 referring to with Mr. McClure asking for additional
15 specific information? 03:36

16 A. This was one of the requests for further
17 information, but this was also, I believe, the
18 point by point from the city attorney's office of
19 why it was being denied. The questions were asked,
20 earlier than this letter going out, in e-mails. 03:37

21 Q. Sir, we've looked at the one e-mail -- the
22 previous exhibit was an e-mail exchange between
23 Mr. McClure and Mr. Zeleny. Are you aware of any
24 other requests by the city attorney for information
25 from Mr. Zeleny on his first permit application? 03:37

1 A. As I recall, there were more e-mail
2 exchanges. I can't -- I don't remember exactly
3 when they were, but I know there were more e-mail
4 exchanges.

5 Q. Have they been produced? 03:37

6 A. Yes.

7 Q. Have all of the e-mail exchanges been
8 produced between the city attorney and Mr. Zeleny
9 regarding his permit application?

10 A. To the best of my recollection, yes. 03:37

11 Q. So the denial letter gives two reasons for
12 denial: One is the lack of a complete application,
13 and the other is not meeting the criteria for a
14 special event.

15 Do you see that? 03:38

16 A. I would disagree with your analysis of
17 this letter. There are more points than just that.

18 Q. Do you know whether any -- anyone at the
19 City proposed or the city attorney's office
20 proposed to Mr. Zeleny ways in which his event 03:38
21 could be made to qualify as a special event within
22 the City's definition?

23 A. The e-mail exchanges and the questions
24 that were being asked and the issues that the city
25 attorney brings up in this letter are basically 03:38

1 advising Mr. Zeleny that these are the issues that
2 are present for this special events permit.

3 It would be logical to assume that if the
4 applicant were to answer these questions in a
5 satisfactory way, then the permit could, in fact, 03:39
6 go through the system and possibly be approved.

7 Q. When you say "answering in a satisfactory
8 way," what do you mean by that?

9 A. If -- getting the information that was
10 requested, that in the first -- the second 03:39
11 paragraph of this letter, there are numerous points
12 there of information that the city attorney's
13 office were requesting.

14 Q. So let's take a look at the prior exhibit.

15 A. Which one? 03:39

16 Q. 265.

17 A. Okay.

18 Q. I'm going to focus on the e-mail from
19 Mr. Zeleny of July 28, 2015. In what way are these
20 answers insufficient in your view as a 03:40
21 representative of the City of Menlo Park?

22 A. You would have -- I believe that question
23 was answered by the denial letter, but you'd have
24 to ask specifically the city attorney.

25 Q. You understand that in your deposition, 03:40

1 you've been designated by the City of Menlo Park as
2 the person qualified to give answers on its behalf
3 regarding Mr. Zeleny's permit application; correct?

4 A. Yes, but I can't be expected to know every
5 single thing that someone is thinking when they're 03:40
6 reading an e-mail or making a decision in this
7 respect.

8 Q. I'm not asking you to do that.

9 What I'm asking you is, looking at these
10 e-mails, as the person designated by the City to 03:40
11 testify on its behalf, why are Mr. Zeleny's answers
12 insufficient?

13 A. You'll have to ask the city attorney.

14 Q. Do you have an opinion, as the
15 representative of the City of Menlo Park, about 03:41
16 whether these answers are sufficient?

17 A. My personal opinion, no. I would defer to
18 the legal opinion of our legal counselors, which
19 are the city attorney's office.

20 Q. Do you have a view of what additional 03:41
21 information Mr. Zeleny could have provided in this
22 e-mail exchange that would have resulted in a grant
23 of his application?

24 A. That information is what was indicated on
25 the denial letter. All those points are the 03:41

1 reasons why the permit was originally denied.

2 Q. So let's turn back to Exhibit 102.

3 A. What is that?

4 Q. It's the -- the -- let's see. The file

5 name is 150924, Bertini Update to NEA.

03:42

6 A. Okay.

7 Q. The denial letter is attached here; right?

8 A. Correct.

9 Q. And the issue that you're referring to are
10 the issues that are set out in the second paragraph 03:42
11 of this letter; correct?

12 A. Correct. Those are some of the issues,
13 but -- those are some of the issues but -- yeah.
14 The next two paragraphs also deal with more issues
15 besides that one paragraph. 03:42

16 Q. So I'm just referring to the incomplete
17 information. With respect to this denial letter,
18 the incomplete information, what additional
19 information could Mr. Zeleny have provided about
20 the specific location that would have resulted in 03:43
21 the granting of his application?

22 A. The only way I can answer that is reading
23 verbatim the letter that's in front of me. I can
24 do that for you, Counselor, if you'd like.

25 Q. No. I'd like your view as the person most 03:43

1 qualified on behalf of the City of Menlo Park.

2 What information did you want from Mr. Zeleny so
3 that you would grant his application?

4 MR. MASTER: Objection. Asked and
5 answered. Argumentative. The document speaks for 03:43
6 itself.

7 If you have something above and beyond
8 that, you can answer.

9 THE WITNESS: Aside from what the document
10 says, I have no other information. 03:43

11 BY MR. ROBINSON:

12 Q. Is any of the information requested in
13 this paragraph in any of the -- required by any of
14 the written policies of the City of Menlo Park?

15 A. Yes. 03:43

16 Q. Which information is required by the
17 written policies of the City of Menlo Park?

18 A. Sound and lighting equipment, location of
19 the event, exact location of the proposed event,
20 how the setup will be, to analyze traffic control. 03:44
21 Other conditions necessary for the approval are the
22 hours and length of the event. The tent --
23 location of tent, generator, video presentations,
24 portable restroom, temporary lighting, sound
25 system, et cetera, and the fact that there is no 03:44

1 end time.

2 So all those -- all of those points are
3 points that were requested in the original
4 application, especially that one part that I
5 brought up that had to do with a specific schematic 03:44
6 of the location where he was going to be.

7 Q. Do you have an understanding of why this
8 letter was sent by the city attorney rather than
9 Mr. Milde?

10 A. No. 03:45

11 Q. In the ordinary process, is the denial
12 letter sent by Mr. Milde?

13 A. Ordinarily, for a typical permit
14 application, yes.

15 Q. What leads you to believe that Mr. Milde 03:45
16 had input into the denial for the application?

17 A. I don't believe I said that.

18 Q. Did Mr. Milde have input into the denial
19 of the permit application?

20 A. I don't know. 03:46

21 Q. How many applications are you aware of,
22 since 2013, where the city attorney issued the
23 denial?

24 A. I don't know. I have no recollection of
25 that. 03:46

1 Q. More than five?

2 A. I don't know.

3 Q. Let's focus on the second paragraph, the
4 second substantive paragraph of the letter here.

5 The second two -- the last two sentences -- there's 03:46
6 a paragraph starting at 352 at the bottom, carrying
7 over to 353.

8 Mr. McClure writes: "To the contrary, you
9 are proposing a 'media production' of a one-man
10 protest." 03:47

11 Do you see that?

12 A. Yes.

13 Q. Is there any written policy or guideline
14 or criteria at the City of Menlo Park that a media
15 production of a one-man protest does not qualify as 03:47
16 a special event?

17 A. I'm not aware of any.

18 Q. In granting or denying special event
19 permits, is the City allowed to consider factors
20 outside of the specific written policy? 03:47

21 A. Time, manner, place.

22 Q. Is it permitted to consider time, manner
23 and place requirements outside of the written
24 policy?

25 A. Yes. 03:47

1 Q. Are those time, place and manner
2 requirements catalogued anywhere?

3 A. They would have to do with applicable laws
4 that needed to be followed. As I stated before,
5 whether they be local, state or federal, numerous 03:48
6 laws may apply to these type of situations, and
7 that's one of the things that would have to be
8 looked at.

9 Q. So if -- in the next paragraph down from
10 there, Mr. McClure writes at the end: "Another 03:48
11 concern is that it is illegal to open carry a
12 firearm in the State of California. As you've
13 described the proposed event, there does not appear
14 to be any logical nexus for legitimate purpose of
15 carrying a firearm." 03:48

16 Do you see that?

17 A. Yes.

18 Q. Is that one of the factors that the City
19 considered in denying Mr. Zeleny's permit
20 application? 03:48

21 A. I believe the document speaks for itself.
22 That's what the city attorney wrote.

23 Q. Was that one of the bases for denying the
24 application?

25 A. I don't know. I don't believe it was a 03:49

1 basis for denying it, but it was a concern because
2 the laws had changed, and you could no longer
3 openly carry rifles and handguns in the state of
4 California.

5 Q. How does the City determine whether 03:49
6 there's a logical nexus to the event?

7 MR. MASTER: Objection. Vague and
8 ambiguous. Overbroad. Calls for a legal
9 conclusion.

10 Go ahead. 03:49

11 THE WITNESS: As I did not author this
12 letter, I don't know.

13 BY MR. ROBINSON:

14 Q. Does the City have a written or unwritten
15 standard for determining whether there's a logical 03:49
16 nexus between carrying firearms and the event?

17 A. No, except that it's illegal to do so.

18 Q. I don't want to cover ground that we
19 covered last time, but if Mr. Zeleny were given the
20 permit that he was asking for, it would have been 03:50
21 legal to carry the firearms; correct?

22 A. Well, that's the question we were trying
23 to get answered through the Department of Justice,
24 the district attorney's office, et cetera. Because
25 that law is very vague, we were trying to determine 03:50

1 whether that's true or not. And as it stands
2 today, our reading of that exception is, yes, if he
3 was permitted under the -- under the special events
4 or film permit, then he could openly carry weapons.

5 Q. When did you come to that view, that he 03:50
6 could openly carry with a permit?

7 A. After -- after having discussions, again,
8 with the Department of Justice, with the DA's
9 office and the city attorney's office.

10 Q. Who at the City decides whether there's a 03:50
11 logical nexus between the carrying of firearms and
12 the event?

13 A. Again, I did not author that. I did not
14 say those words, so I don't know what he meant by
15 that. 03:51

16 Q. Okay. Is it the city attorney's call
17 about whether there's a logical nexus?

18 A. I don't know.

19 Q. Who at the City determines whether there
20 was a legitimate purpose in carrying the firearm? 03:51

21 A. Again, I did not authorize this letter. I
22 did not say those words. So I don't have an answer
23 for you.

24 Q. As a matter of policy at the City of Menlo
25 Park, was Zeleny required to have a logical nexus 03:51

1 between the carrying of firearms and his protest in
2 order to get a permit?

3 MR. MASTER: I'll object. The question
4 calls for a legal conclusion. Lacks foundation.
5 Calls for speculation. It's also vague and 03:51
6 ambiguous and overbroad.

7 If you know.

8 THE WITNESS: Again, you could ask it as
9 many ways as you would like, Counselor. I don't
10 know the answer. I did not write this statement. 03:52
11 I don't know what he meant by that.

12 BY MR. ROBINSON:

13 Q. My question was directed towards the
14 City's policies and whether this logical-nexus
15 issue is in the City's policy, whether written or 03:52
16 unwritten.

17 A. I did not see that, but the only thing
18 from my perspective in reading this, it had to do
19 with state law more than City policy.

20 Q. Now, the last paragraph of Mr. McClure's 03:52
21 letter says, "If you wish to appeal this denial of
22 your application, you must appeal the denial to the
23 City's Special Event Permit Committee."

24 Do you see that?

25 A. I do. 03:52

1 Q. In the ordinary course of a permit
2 application, the special events permit committee
3 makes the initial decision; right?

4 A. In the normal course for a typical
5 application, certainly. 03:53

6 Q. And appeals -- the special event permit
7 committee doesn't hear appeals; does it?

8 A. The special event committee -- no, they
9 would hear an appeal, and then it would go to the
10 department director of the community services 03:53
11 division or department.

12 Q. Okay. So Mr. Zeleny appealed the denial
13 of his permit; right?

14 A. Was that a question, did he?

15 Q. Did he. 03:53

16 A. Yes.

17 Q. And he went through all of the layers of
18 the City appeals process; correct?

19 A. As far as I recollect, yes.

20 Q. What are the layers of the City appeals 03:53
21 process?

22 A. From the permit committee to the director
23 of the community services department to the city
24 manager to the city council.

25 Q. Let's focus on the first level of review 03:54

1 that you're talking about, the first level of
2 appeal to the permit committee. What is the --
3 what is the standard that they apply to review it?
4 Do they make an independent decision or do they
5 consider the decision made by the original person? 03:54
6 How does that work?

7 A. Of course, they would look at all the
8 factors involved, just like any appeal, to see
9 whether there was more information that could be
10 gleaned from the applicant or whether they wanted 03:54
11 to overturn the appeal. And then they would render
12 the decision.

13 Q. All right. Do they have hearings at that
14 level of appeal --

15 A. No. 03:55

16 Q. -- special permits?

17 A. No.

18 Q. Do they -- do they take in evidence at
19 that level of appeal?

20 A. Aside from the documents that are already 03:55
21 submitted -- it's not a formal judicial hearing.
22 It's just a group that is looking at an application
23 denial.

24 Q. Is any of this appeal process written down
25 anywhere, in City ordinance, in the policies or 03:55

1 anywhere else?

2 A. To the best of my recollection, I believe
3 it is in City ordinances, the appeal process,
4 because ultimately the city council is the final
5 arbiter at the City level. 03:55

6 Q. Are you aware of any appeals of denial of
7 the special events permits that occurred before
8 Mr. Zeleny's appeal?

9 A. No.

10 Q. Let's talk about the second layer, so the 03:56
11 appeal to the director of community service. In
12 the ordinary process, how did the director of
13 community service review an appeal? Is it
14 independent consideration, or is it limited to
15 review of the materials that were submitted 03:56
16 originally?

17 A. Again, it would be something very
18 informal. It's not a judicial hearing. The
19 director would look at the information. If the
20 director wished to recontact the applicant, they 03:56
21 could do that. And then they would make their
22 decision based on the information they have.

23 Q. The next level of appeal is the city
24 manager; is that right?

25 A. Correct. 03:56

1 Q. And that level of appeal involves a
2 hearing; right?

3 A. That's correct, an informal hearing.

4 Q. And both the City staff and the applicant
5 participate in that hearing? 03:57

6 A. Correct.

7 Q. And then there's an appeal to the city
8 council; right?

9 A. That's correct.

10 Q. And that also involves a hearing? 03:57

11 A. Informal hearing, yes.

12 Q. And that's a public hearing, correct, at a
13 city council meeting?

14 A. That's correct.

15 MR. ROBINSON: We've been going almost 03:57
16 another hour. Why don't we take a quick, like,
17 five-minute break here.

18 MR. MASTER: How much time do you have
19 left, Damion?

20 MR. ROBINSON: It's a good question. I'm 03:57
21 going to probably use the full time that we have
22 available. There's still a lot to cover.

23 THE VIDEOGRAPHER: Going off the record.
24 The time now is 3:58.

25 (Off the record.) 03:58

1 THE VIDEOGRAPHER: Back on the record.

2 The time now is 4:06.

3 (Plaintiff's Exhibit 267 marked
4 for Identification.)

5 BY MR. ROBINSON: 04:06

6 Q. So I just introduced another exhibit. Let
7 me know if that one has shown up for you.

8 A. Which number?

9 Q. So it's marked as 267. Has that shown up
10 yet? 04:06

11 A. Yes.

12 Q. So as you'll see on the first page, this
13 was previously marked as 103. Do you see that,
14 Milde 103?

15 A. I do. 04:07

16 Q. So let's refer to it as Exhibit 103 for
17 consistency. Exhibit 103 is Bates marked MP 451
18 through MP 456; correct?

19 A. Yes.

20 Q. This is a series of e-mails relating to 04:07
21 Mr. Zeleny's special events permit; right?

22 A. Correct.

23 Q. And the very top e-mail, the last e-mail
24 in this chain, was from you to Matt Milde, Cherise
25 Brandell and -- is it Robert Jonsen? 04:07

Page 435

1 A. Yes. He was the police chief at the time.

2 Q. Okay. So in your -- in this e-mail -- go
3 ahead and review it, but it relates to Mr. Zeleny's
4 appeal of his denial of his permit application;
5 correct? 04:08

6 A. Yes.

7 Q. And Mr. Milde was in the community
8 services department; right?

9 A. Yes.

10 Q. And the community services department is 04:08
11 primarily responsible for handling special event
12 permits; right?

13 A. Right.

14 Q. And in your e-mail, you instructed
15 Mr. Milde not to respond to Mr. Zeleny; correct? 04:08

16 A. Correct.

17 Q. When you said "stand by for our response,"
18 who is the "our" that you were referring to?

19 A. That would be a response in conjunction
20 with the city attorney's office so we could, in 04:08
21 fact, correctly give the -- Mr. Zeleny the appeals
22 process and how it would go forward.

23 Q. Did you consult with the city attorney's
24 office at that time?

25 A. Yes. 04:09

1 Q. Did the City eventually respond to
2 Mr. Zeleny?

3 A. To my recollection, yes.

4 Q. In his e-mail -- in Mr. Zeleny's e-mail,
5 appealing the denial of his permit application, it 04:09
6 starts on 451 and carries over through the end of
7 the document. I want to focus on the third
8 paragraph of that e-mail.

9 A. The one about the First Amendment?

10 Q. No. "As to your claim that my application 04:09
11 is incomplete."

12 A. Okay.

13 Q. So Mr. Zeleny says he is attaching a map
14 of the area in question. Do you see that?

15 A. Yes. 04:10

16 Q. Do you recall seeing a map of the area
17 that Mr. Zeleny planned for his event?

18 A. I recall a map, but I don't remember
19 whether it was involving the special events permit
20 or the preliminary permit. 04:10

21 Q. Do you recall whether the city believed,
22 after receiving this e-mail from Mr. Zeleny, that
23 his application was still incomplete?

24 A. I would just refer to the documents that
25 were -- that were submitted, that stated each of 04:10

1 the reasons why the denial was -- or the permit was
2 denied.

3 Q. In the same paragraph a little bit further
4 down, Mr. Zeleny says that his event will be
5 subject to ongoing mutual agreement on the time, 04:10
6 place and manner parameters.

7 Do you see that?

8 A. Yes.

9 Q. Did the City ever reach any agreement with
10 Mr. Zeleny about the time, place and manner of his 04:11
11 protest?

12 A. Of his permit application?

13 Q. Sure, of his permit application.

14 A. Not that I'm aware of, no.

15 Q. Are you aware of the City, at any point in 04:11
16 the appeals process, proposing time, place and
17 manner parameters for Mr. Zeleny's event?

18 A. Yes. I believe that the points of denial
19 are in the record, in the administrative record,
20 and every letter and/or e-mail that was sent to 04:11
21 Mr. Zeleny spoke about those.

22 Q. So not the points of denial. Did the City
23 ever propose to Mr. Zeleny parameters in which he
24 could conduct his event?

25 A. In looking at the city attorney's denial, 04:11

1 there were some examples in there about things he
2 could have done to try to complete the application
3 and to be able to obtain the permit.

4 Q. So what were the time parameters that the
5 City proposed to Mr. Zeleny? 04:12

6 A. I believe that the document speaks for
7 itself. It talked about the fact that we need to
8 have some more definite time as opposed to just
9 indefinite and having this go on forever as far as
10 time was concerned. 04:12

11 Q. Did the City ever propose any concrete
12 time parameters that would have resulted in
13 Mr. Zeleny's application being approved?

14 A. No. The City said pick a time, but
15 "indefinite" is not an appropriate time. 04:12

16 Q. Did the City ever propose any place
17 parameters for a place where Mr. Zeleny could
18 conduct his event and have his application
19 approved?

20 A. There was discussion about the location 04:12
21 that he was -- he had done his protests in
22 previously, which was a public right-of-way as
23 opposed to the median. Yes, there was discussion
24 about that.

25 Q. Did the City, at any point, suggest to 04:13

1 Mr. Zeleny that if he protested in that area on the
2 sidewalk, that his permit would be approved?

3 A. No, not necessarily just that, but there
4 were other points that the document speaks about
5 that were points of information that the City 04:13
6 needed in order to go forward to approve the
7 application.

8 Q. Okay. So I'm not asking you about
9 information that the City requested or needed from
10 Mr. Zeleny. I'm asking you whether the City made 04:13
11 any proposal to Mr. Zeleny about circumstances in
12 which his event would be approved, meaning did the
13 City ever say, If you conduct your event during
14 this time and this location in this manner, it
15 could be approved? 04:13

16 A. I believe there was language to that
17 extent, about being able to -- being amenable to
18 speaking to him about possible, specific locations
19 or specific issues, time, manner, location, but I
20 don't know -- I don't believe that that was 04:14
21 enumerated in an e-mail or a letter.

22 Q. When did a discussion about that take
23 place?

24 A. I don't recall whether it was in an e-mail
25 or in one of the letters. It was in one of the 04:14

1 documents that's in the record.

2 Q. So in one of the documents in the
3 administrative record of Mr. Zeleny's permit
4 application, there is an invitation by the City to
5 discuss parameters that would allow Mr. Zeleny to 04:14
6 conduct his event; is that correct?

7 A. Yes.

8 And I need to correct myself from earlier.
9 I was conflating the film permit process with this
10 special events process. So I'm not sure in which 04:14
11 process of those two that discussion occurred. And
12 the e-mails that I mentioned earlier I believe were
13 in the film permitting process, not necessarily the
14 special events process, if that makes sense.

15 Q. It does. 04:15

16 Did the City -- aside from inviting
17 Mr. Zeleny to discuss time, place and manner in --
18 wherever those e-mails are, did the City, in
19 connection with Mr. Zeleny's special event permit,
20 ever make a proposal to Mr. Zeleny about time, 04:15
21 place and manner parameters?

22 A. Other than what I already stated, not that
23 I'm aware of.

24 Q. At any point in the special event permit
25 process all the way through the final appeal, did 04:15

1 the City ever tell Mr. Zeleny the conditions that
2 he could meet in order to approve his permit?

3 A. Yes. Those were enumerated in the
4 documents -- in the -- in the denials that he
5 received. They were bullet points in -- sorry. 04:15

6 Q. What were the conditions that the City
7 told Mr. Zeleny, If you satisfy these conditions,
8 we'll approve your permit?

9 A. I have to look at the document itself. If
10 the document was up, I would point to the document. 04:16

11 Q. Which document are you talking about?

12 A. Well, there were several documents. There
13 was the document that was the letter of -- denial
14 letter that was sent by the city attorney
15 originally, by Matt Milde secondarily, by Cherise 04:16
16 Brandell thirdly, and then by the city manager's
17 office after the appeal, and then the city council.

18 So each one of those letters enumerated
19 issues or information or items that needed to be
20 changed in order to be able to allow this permit to 04:16
21 go forward.

22 Q. But other than believing that it was
23 somewhere in the administrative record, can you
24 recall a specific time during the appeals process
25 when the City told Mr. Zeleny, Meet these criteria, 04:16

1 and we'll approve your permit?

2 A. I've already answered that, Counselor.

3 It's in the -- it's in the denial letters that
4 specifically state this is the information that is
5 either missing, incomplete or that the City has a
6 problem with. 04:17

7 Q. So I'm not asking about requests for more
8 information at this point. What I'm asking about
9 is criteria for approving the permit.

10 Was Mr. Zeleny ever given by the City of 04:17
11 Menlo Park criteria for approving the permit, not
12 requests for information. These are the time,
13 place and manner parameters.

14 MR. MASTER: I'll object. That's a
15 compound question. It's vague and ambiguous. 04:17
16 Calls for a legal conclusion. But it's also been
17 asked and answered numerous times. It's
18 argumentative.

19 Go ahead.

20 THE WITNESS: In each of the letters of 04:17
21 denial, there were points given on why it was
22 denied. It would be logical to conclude that if
23 Mr. Zeleny addressed each of those points, then the
24 permit could be issued.

25 BY MR. ROBINSON: 04:18

1 Q. Did the City ever tell Mr. Zeleny how he
2 needed to address those points in order to get the
3 permit issued?

4 MR. MASTER: Objection. Asked and
5 answered. Did you not hear what he just said? 04:18
6 Seriously. It's argumentative.

7 One more time. Go ahead.

8 THE WITNESS: In each of the denial
9 letters, specific points were dictated in the
10 letter that advised Mr. Zeleny that he was denied 04:18
11 for these reasons. It would be logical to conclude
12 that if you address each of these points, then a
13 permit could be issued.

14 BY MR. ROBINSON:

15 Q. So let's turn back to Exhibit 102. 04:18
16 It's -- the file name is 150924. And I'm going to
17 the permit denial by the city attorney, starting on
18 page MP 352.

19 A. Okay.

20 Q. Where in this denial letter does it tell 04:19
21 Mr. Zeleny a location where he would be allowed to
22 conduct his protest?

23 A. In this letter, it states that the
24 location that he is proposing is not a location
25 that would be a location that a permit could be 04:19

1 issued.

2 So, logically, I would assume that you
3 would take that information and come up with a new
4 location. In this letter itself, there is no
5 specific direction to Mr. Zeleny saying you can do 04:19
6 this event here but not here. What it's saying in
7 this letter is that you just can't do the event in
8 the center of the median because it's illegal.

9 Q. At any point in time, did the City of
10 Menlo Park tell Mr. Zeleny, if you conduct your 04:20
11 protest at this location, we'll approve your
12 permit?

13 A. Yes. My recollection is that one time or
14 even more than one time, Mr. Zeleny was told that
15 if you were to use the location that you normally 04:20
16 would use, that you've used in the past, that would
17 be acceptable as far as place goes.

18 Q. How was that information relayed to
19 Mr. Zeleny?

20 A. I don't recall if it was an e-mail or in 04:20
21 one of the letters. I don't recall.

22 Q. Is it in something that's been produced in
23 this case?

24 A. Yes.

25 Q. At any point in time, was Mr. Zeleny told 04:20

1 words to the effect of, if you conduct your event
2 during these time periods, we'll approve your
3 permit?

4 A. Not that I'm aware of, no.

5 Q. Was Mr. Zeleny ever told, during the 04:20
6 appeal process or during the permitting process, If
7 you conduct your protests within these manner
8 parameters, we'll approve your permit?

9 MR. MASTER: Objection. Vague and
10 ambiguous. Overbroad. 04:21

11 Go ahead.

12 THE WITNESS: No, but, again, I would
13 refer back to the documents I received, the denial
14 documents that dealt with manner, that dealt with
15 time, they dealt with place. And, again, 04:21
16 logically, you would say that if you were to
17 address each of those points that are in the denial
18 letters, then the permit could be issued or
19 approved.

20 BY MR. ROBINSON: 04:21

21 Q. He would have to address the points to the
22 satisfaction of the City; correct?

23 A. Correct.

24 Q. So let's go back to Exhibit 103, which has
25 been marked in this deposition as 267. We're 04:22

1 referring to it as 103.

2 MR. MASTER: Damion, just for clarity, can
3 we either remove 267 or -- it's ridiculous to have
4 two.

5 MR. ROBINSON: Well, we can't remove it. 04:22
6 Veritext has to remove it.

7 MR. MASTER: So can we remove 267 and just
8 call it 103, since you're referring to it as 103?

9 MR. ROBINSON: Yes, I'm referring to it as
10 103. So let's refer to it as 103. 04:22

11 MR. MASTER: Okay.

12 THE WITNESS: Okay.

13 BY MR. ROBINSON:

14 Q. So in this response to the denial of his
15 permit and his appeal, Mr. Zeleny asked the City of 04:22
16 Menlo Park, If you have any specific requests in
17 this regard, meaning in terms of time, place or
18 manner, please make them with no further ado.

19 Do you see that?

20 A. No. Direct me to where that is. 04:23

21 Q. It's in the third paragraph, the one that
22 starts out: "As to your claim that my application
23 is incomplete."

24 A. Okay. I see it.

25 Q. Do you know if the City did that, provided 04:23

1 specific requests to Mr. Zeleny as to the time,
2 place or manner?

3 A. I do not believe that the City made
4 specific time, place, manner suggestions to
5 Mr. Zeleny, but I know there was an invitation to 04:23
6 discuss those issues.

7 Q. Okay. I'm going to go ahead and mark --
8 I'm going to introduce what was previously marked
9 as Exhibit 105. It should pop up with the file
10 name 160504, Appeal Denial. 04:24

11 A. Okay.

12 Q. Do you recognize this document?

13 A. I recognize it as a letter.

14 Q. A letter that was part of the
15 administrative record of Mr. Zeleny's permit 04:24
16 application and appeal?

17 A. Yes.

18 Q. Is it consistent with your recollection
19 that the City treated Mr. Zeleny's appeal as a new
20 permit application? 04:25

21 A. I don't understand what you're asking.

22 MR. MASTER: Read the document.

23 THE WITNESS: Okay. Let me read the
24 document.

25 MR. ROBINSON: Okay. 04:25

1 THE WITNESS: Yes. In reading the
2 document, the answer is yes. The city attorney's
3 office was treating his appeal as a new
4 application, as there were several modifications
5 that he made to that application. 04:26

6 BY MR. ROBINSON:

7 Q. And the new application was denied through
8 this letter; correct?

9 A. Correct.

10 Q. Do you know if anyone, other than the city 04:26
11 attorney's office, was involved in making the
12 decision to deny the renewed application or the new
13 application?

14 A. Yes. The city attorney's office, and I
15 spoke to the city attorney, and it is my 04:27
16 recollection that Matt Milde also spoke to the city
17 attorney.

18 Q. What did you tell the city attorney?

19 MR. MASTER: Objection. Don't answer
20 that. That's attorney-client-privileged 04:27
21 communication.

22 BY MR. ROBINSON:

23 Q. Are you going to follow your attorney's
24 instruction not to answer?

25 A. Yes. 04:27

1 Q. Does the city attorney have authority to
2 approve or deny permit applications?

3 A. Certainly.

4 Q. Did you believe that Mr. Zeleny's renewed
5 permit application should be denied? 04:27

6 A. My -- my belief was that the concern --
7 I'm sorry. Was there something else?

8 Q. No.

9 A. My belief was that the concern that we had
10 originally regarding the time, place, manner of 04:28
11 this permitted special event was still a concern as
12 far as location, still the confusion regarding the
13 exception to the open carry, the traffic -- the
14 traffic issues, the public safety issues both for
15 Mr. Zeleny, himself, and for the public at large. 04:28

16 So all those -- all those were still
17 concerns of the police department that I, in fact,
18 did let the city attorney know.

19 Q. Do you know if Mr. Milde had a view about
20 whether this -- what was treated as a renewed 04:28
21 application should be denied?

22 A. I don't know the answer to that.

23 Q. Did you talk to Mr. Milde about it?

24 A. Not about this second application, no.

25 Q. Did the city attorney make the ultimate 04:29

1 decision about whether to deny this application?

2 MR. MASTER: Objection. Vague and
3 ambiguous. Overbroad.

4 Go ahead.

5 THE WITNESS: Yes. I believe the document 04:29
6 speaks for itself. That is the city attorney
7 making that determination.

8 BY MR. ROBINSON:

9 Q. Is there any policy or procedure that
10 you're aware of, a written policy or procedure, 04:29
11 that gives the city attorney's office authority to
12 grant or deny special event permit applications?

13 A. As counsel -- legal counsel for the City,
14 it is within their purview to deny an application
15 of this nature. I'm not sure whether it's written 04:29
16 anywhere, but they are legal counsel for the City.

17 Q. And what gives you the impression that the
18 legal counsel for the City in that capacity has
19 authority to deny permit applications?

20 MR. MASTER: Again, the question is vague, 04:30
21 ambiguous and overbroad. Calls for a legal
22 conclusion and speculation.

23 Go ahead.

24 THE WITNESS: The city attorney's office
25 is the department that is our legal advisors. In 04:30

1 some cases, the city attorney's office becomes
2 involved in city business or issues, and they have
3 the authority to make decisions. They work -- the
4 city attorney's office works directly for the city
5 council. 04:30

6 BY MR. ROBINSON:

7 Q. Are you aware of any other permit
8 application that was denied by the city attorney's
9 office, for a special event permit?

10 A. I'm not aware of any, no. 04:30

11 Q. Do you know if, before denying this --
12 what was considered a revised application, the city
13 attorney attempted to contact Mr. Zeleny to address
14 some of the issues raised here, any of the issues
15 raised here? 04:31

16 A. I don't -- as I sit here today, I don't
17 have a recollection of that, whether they did or
18 not.

19 Q. Between Mr. Zeleny filing his notice of
20 appeal or e-mailing his notice of appeal and the 04:31
21 city attorney deciding to deny it, do you know if
22 anyone at the City contacted Mr. Zeleny to try to
23 get more information about his permit application?

24 A. I don't know. I don't have a recollection
25 of that. 04:31

1 Q. Going on to page 2 of this document, the
2 first full paragraph, it starts: "Also, the
3 revised application."

4 A. Yes.

5 Q. It talks about the essential element of 04:31
6 community participation. Do you see that?

7 A. I do.

8 Q. Is a requirement of community
9 participation anywhere in the written policies of
10 the City of Menlo Park related to special events 04:32
11 applications?

12 A. Yes. It's in the FAQ.

13 Q. What is the standard for deciding if an
14 event requires or allows community participation?

15 A. This goes back to when this committee got 04:32
16 together to address special events permits, because
17 the main issues that were going on were that
18 private families, single families were attempting
19 to block off entire streets for a birthday party
20 for their family member, and that caused a great 04:32
21 deal of consternation in the neighborhoods.

22 So one of the criteria was that if you're
23 going to be getting a special events permit and
24 blocking off, whether they be streets or sidewalks
25 or something to that effect, that it would be a 04:32

1 community event and not just a private event for
2 one entity, one family, one household, et cetera.

3 Q. What type of community participation
4 qualifies an event as a special event?

5 A. I don't -- your question doesn't -- 04:33
6 doesn't make sense, because it doesn't make it
7 qualify. It's one of the criteria for allowing a
8 permit. So, in other words, if a family wanted to
9 close down a street just to put their birthday
10 party on, it would be denied because it is not an 04:33
11 event for the community.

12 Q. Who decides whether it's an event for the
13 entire community or not? Let me rephrase that.

14 In considering whether to approve or deny
15 a special event permit, who at the City makes the 04:33
16 decision of whether the event has community
17 participation?

18 A. That would be community services, on
19 whether or not the entire community is invited to
20 participate in this -- in this event. 04:33

21 Q. Who made the decision of whether
22 Mr. Zeleny's event had the essential elements of
23 community participation?

24 A. In this case, with the letter, with the
25 document that we see in front of us? 04:34

1 Q. Right.

2 A. The city attorney.

3 Q. Is the elements of community participation
4 assessed case by case?

5 A. It would have to be. Every application is 04:34
6 going to be different. So, yes, it's case by case.

7 Q. Is it a discretionary decision, on the
8 part of whoever is deciding the application,
9 whether the event had sufficient community
10 participation to qualify as a special event? 04:34

11 MR. MASTER: Objection. The question is
12 vague, ambiguous and overbroad.

13 Go ahead.

14 THE WITNESS: Repeat the question.

15 BY MR. ROBINSON: 04:35

16 Q. Does the person making the decision on a
17 special event permit application have discretion to
18 determine whether the application has enough of a
19 community participation element to qualify as a
20 special event? 04:35

21 A. I would disagree in the way the question
22 is even asked. Discretion in what way? What
23 they're looking for is, is the public invited to
24 this or is it for one single entity that is
25 impacting other public members and they cannot 04:35

1 participate. That's the issue.

2 Q. Does the event have to be open to anyone
3 who shows up?

4 A. For a public event, yes.

5 Q. For a special event. 04:35

6 A. For a special event, it has to be for the
7 community if, in fact, it is impacting other
8 community members. Now, obviously, if somebody
9 wants to -- as a hypothetical, if somebody wanted
10 to rent a park for a wedding, that doesn't 04:35
11 necessarily mean that everybody in the community is
12 invited, but, of course, they could go watch if
13 they wanted to. You can't stop them from doing
14 that. But it is -- that would be more of a limited
15 impact on the community, if they're at a park, as 04:36
16 opposed to closing down streets, et cetera.

17 Q. Would that qualify as a special event?

18 A. A wedding?

19 Q. Right.

20 A. It certainly would, yes. 04:36

21 Q. What about a block party; if a community
22 wanted to have a block party, that would be a
23 special event; right?

24 A. As long as all the members on that -- all
25 the residents on that block signed an agreement, 04:36

1 yes. If they said, yes, we're okay with this and
2 we're also invited to this block party, yes.

3 Q. In order to qualify, would they have to
4 allow people who are not part of that residential
5 community to the event? 04:36

6 A. They -- it's not required that they allow
7 other people from the community, but the people who
8 would be affected on that block would be invited.

9 Q. So I'm going to introduce another exhibit.
10 This one is 268. 04:37

11 (Plaintiff's Exhibit 268 marked
12 for Identification.)

13 BY MR. ROBINSON:

14 Q. The e-mail is a bit hard to read, but
15 let's go -- for the record, Exhibit 268 is four 04:37
16 pages, MP 473 through MP 476; correct?

17 A. Yes.

18 MR. MASTER: Damion, I believe this was
19 marked in at least two other depositions. The
20 whole purpose of doing these continuing exhibits is 04:38
21 so we don't have duplicative exhibits. Is there
22 any way you guys can actually do that?

23 MR. ROBINSON: With respect to this
24 document, though, there's not, particularly since
25 it's already been marked in this deposition. So 04:38

1 for this deposition, I'm going to refer to it as
2 268.

3 BY MR. ROBINSON:

4 Q. Starting on the third page of Exhibit 268,
5 there is a letter from the City of Menlo Park to 04:38
6 Mr. Zeleny; correct?

7 A. Correct.

8 Q. And this is a further denial of an appeal
9 of the special events permit; correct?

10 A. No. That's incorrect. It's not a denial 04:38
11 of an appeal. It's a denial of an application, the
12 second application.

13 Q. This is a denial of -- is the second
14 application -- what you referred to as the second
15 application the e-mail Mr. Zeleny sent asking to 04:39
16 appeal the denial of the first application?

17 A. Yes.

18 Q. And in the document we just looked at,
19 Exhibit 105, the city attorney's office had already
20 denied the new application; right? 04:39

21 A. That's correct.

22 Q. And if you look at Mr. Zeleny's e-mail of
23 May 27, he starts out, "Dear Mr. McClure, I have
24 received your second denial, dated 4 May 2016, of
25 my amended application for a special event permit, 04:39

1 submitted on 15 April 2016. My second appeal
2 follows."

3 Correct? Do you see that?

4 A. Correct. Yes.

5 Q. So Mr. Zeleny had submitted one 04:40
6 application. The City had denied it. Mr. Zeleny
7 attempted to appeal. The City treated that as a
8 new application and then denied it; right?

9 A. Yeah. Now I see, based on the e-mail and
10 based on the dates, that this letter sent by Matt 04:40
11 Milde is, in fact, a denial of the second
12 application's appeal, if that makes sense.

13 Q. In the ordinary process for permit
14 applications, does Mr. Milde himself resolve
15 appeals of permit applications? 04:40

16 A. He could, as the recreation coordinator,
17 and then it could be escalated to the community
18 services director.

19 Q. In your previous testimony, I thought you
20 said that the permit committee decides appeals from 04:41
21 the initial denial.

22 A. Right. And Matt Milde was leading the
23 appeals committee -- I'm sorry -- the special
24 events committee at the time.

25 Q. Do you know if this appeal was considered 04:41

1 by the special events committee?

2 A. I'm not sure who Matt Milde spoke to prior
3 to this denial.

4 Q. Let's flip back to Exhibit 105 for just a
5 second. It's 150504. 04:41

6 A. Okay.

7 Q. In this letter, Mr. McClure directs
8 Mr. Zeleny to -- if he wishes to appeal, to provide
9 written notice to the community services director.

10 Do you see that? 04:41

11 A. I do.

12 Q. Do you have an understanding of why, in
13 that case, Mr. Milde was directing the appeal
14 rather than the community services director?

15 A. My recollection is that Mr. Zeleny 04:42
16 appealed via that e-mail, and as it was a new
17 application and a new appeal, it started back down
18 at the --

19 THE REPORTER: Excuse me. You're cutting
20 out.

21 (Record read by the Reporter.)

22 THE WITNESS: That Mr. Zeleny was
23 appealing again to the second -- this is convoluted
24 because of all the documents that are here -- to
25 the second application. So the initial appeal 04:42

1 would come from the special events committee that
2 Matt Milde chaired or headed.

3 So the initial denial of the appeal came
4 from him. And then the next step in the appeal
5 would be the community services director. 04:43

6 BY MR. ROBINSON:

7 Q. So when Mr. McClure, in his letter, told
8 Mr. Zeleny to contact the community services
9 director, that was an error. Is that what you're
10 saying? 04:43

11 A. I'm not sure it was an error, because that
12 is the logical -- the logical next step, but it's
13 my recollection that the letter from Matt Milde
14 came out immediately following this letter.

15 Q. Do you know whether the community 04:43
16 services -- strike that.

17 Do you know whether the special event
18 permit committee provided input to Mr. Milde in
19 connection with this denial letter that's in
20 Exhibit 268? 04:44

21 A. As I've already testified to today, I
22 don't know whether he talked to that other -- that
23 committee.

24 Q. Okay. In his letter, Mr. Milde told -- in
25 his letter of June 16th, 2016, Mr. Milde told 04:44

1 Mr. Zeleny that if he wanted to appeal further, he
2 would appeal to the city manager, Alex McIntyre.

3 Do you see that?

4 A. I'm on a different -- you need to give me
5 the number of that. Which one was that? 04:44

6 Q. Exhibit 268.

7 A. Yes. Based on that paragraph in this
8 letter, which reads: "Determination of the
9 approval or denial of any application is at the
10 discretion of the special event permit committee 04:45
11 acting on behalf of the community services
12 director. If you feel this decision has been made
13 in error or warrants a permit outside of the
14 policies established by the City of Menlo Park, you
15 may appeal in writing to the city manager, Alex 04:45
16 McIntyre."

17 Q. What does the reference to a "permit
18 outside of the policies established by the City of
19 Menlo Park" mean? What policies are being referred
20 to? 04:45

21 A. The policies that are found in the
22 application process, the FAQs.

23 Q. Any other policies that that could be
24 referring to, other than the four documents we
25 looked at last time? 04:45

A. Yes. Outside of policies, we also have laws that would have to be addressed, also, whether they are local, state or federal.

Q. Can the city manager grant permit applications outside of the written policies established by the City?

A. Did you say can he?

Q. Does he have the authority to issue a permit outside of the policies established by the City of Menlo Park?

MR. MASTER: Object. The question is vague, ambiguous and overbroad. Lacks foundation. Calls for speculation.

You can answer, if you know.

THE WITNESS: The city manager has the right -- or has the ability and the right to overturn a denial and issue a permit. The city manager is the -- basically, the CEO of the City.

BY MR. ROBINSON:

Q. So can the city manager -- let's step back. In 2016, at the time this letter was written, did the city manager have the authority to issue a special events permit outside of the policies established by the City of Menlo Park?

A. The city manager was not involved in 04:47

1 issuing permits, period. The city manager was
2 involved in the appeal process and could overturn a
3 denial of a permit, and if they -- if the city
4 manager so wished, they could allow the permit to
5 be issued. Permit applications do not go straight 04:47
6 to the city manager.

7 Q. Did the city manager have the right to --
8 as part of the appeals process, to approve a permit
9 outside of the policies established by the City of
10 Menlo Park? 04:47

11 MR. MASTER: Objection. Vague and
12 ambiguous and overbroad. Lacks foundation. Calls
13 for a legal conclusion and speculation.

14 THE WITNESS: Again, the city manager
15 could, in fact, overturn a denial of a permit and 04:47
16 have the permit issued.

17 BY MR. ROBINSON:

18 Q. Could he overturn the denial of a permit
19 outside the policies established by the City of
20 Menlo Park? 04:48

21 A. Yes.

22 Q. Okay. I'm going to mark the next in
23 order. So the document has been previously marked.
24 The file name and the folder is 160624, Further
25 Denial. 04:49

1 A. What are the Bates numbers?

2 Q. MP 0477 through MP 000480.

3 A. Okay. I see it.

4 Q. It was previously marked as Exhibit 77, on
5 the first page. 04:49

6 A. Yes.

7 Q. And I'm going to ask you to take a look at
8 the special event denial appeal letter of June 24,
9 2016, starting on 479.

10 A. Okay. 04:49

11 Q. This was a letter by Cherise Brandell;
12 correct?

13 A. Yes.

14 Q. Ms. Brandell was the community services
15 director? 04:50

16 A. At the time, yes.

17 Q. Do you have an understanding of why
18 Mr. Zeleny's further appeal was routed to
19 Ms. Brandell instead of Mr. McIntyre?

20 A. Well, that would be the logical next step 04:50
21 in the appeal. So I'm not sure if Mr. Milde
22 perhaps made a mistake in giving the city manager
23 the next step in the appeal, but this would be the
24 logical next step in the appeal, as stated in the
25 application process. 04:50

1 Q. I'm going to -- let's mark a new exhibit.

2 You're aware that Mr. Zeleny did appeal to
3 the city manager following Ms. Brandell's letter;
4 correct?

5 A. Yes. 04:51

6 Q. And there was a hearing regarding that
7 appeal?

8 A. That's correct.

9 Q. Did you participate in the hearing?

10 A. I did. 04:51

11 Q. Did you represent City staff in the
12 hearing?

13 A. I did.

14 Q. Did you argue in favor of upholding --

15 A. You broke. 04:52

16 MR. MASTER: Upholding what?

17 MR. ROBINSON: The denial of the permit to
18 Mr. Zeleny.

19 THE WITNESS: Yes.

20 (Plaintiff's Exhibit 269 marked
21 for Identification.)

22 BY MR. ROBINSON:

23 Q. So I marked Exhibit 269. It's MP 948
24 through MP 951. Let me know when it loads.

25 A. I have it. 04:52

1 Q. Do you recognize this exhibit?

2 A. I'm sorry. Do I recognize the document?

3 Q. Correct.

4 A. Yes. It's a letter.

5 Q. Mr. McIntyre's letter denying Mr. Zeleny's 04:53
6 appeal; correct?

7 A. Correct.

8 Q. Mr. McIntyre lists grounds for denial of
9 the appeal, starting on page 3 and carrying over to
10 page 4. Do you see that? 04:53

11 A. Yes.

12 Q. Do any of those grounds appear in the
13 written policies of the City of Menlo Park
14 governing permit approval or denial?

15 MR. MASTER: Vague and ambiguous and 04:54
16 overbroad.

17 THE WITNESS: Most of these points have to
18 do with Penal Code violations and/or Vehicle Code
19 violations. So, no, they would not be in the FAQs
20 of the special events permit process, as you're 04:54
21 required to follow the law.

22 BY MR. ROBINSON:

23 Q. One of the uses that we talked about
24 before of special event permits are for block
25 parties; is that right? 04:54

1 A. Correct.

2 Q. In connection with block parties, people
3 are allowed to block off a certain portion of a
4 street to have the block party?

5 A. That's correct. 04:54

6 Q. They're allowed to have the block party
7 actually in the street?

8 A. The Vehicle Code allows a local
9 municipality to block off portions of a street.
10 And the answer is yes. 04:55

11 Q. And in connection with special event
12 permit applications for block parties, residents
13 are allowed to block off the street and have the
14 party in the street; correct?

15 A. That's correct. 04:55

16 Q. And that's true, even though the event
17 would interfere with the right-of-way; correct?

18 A. As long as the entire block signed a
19 release saying they were okay with the block party,
20 yes. 04:55

21 Q. Let's look at page -- starting on 950 and
22 carrying over to 951. There are practical aspects
23 and public safety concerns. One is the lighting at
24 night.

25 Do you see that? 04:55

1 A. I do.

2 Q. Is the lighting at night contemplated by
3 the City's written policy as to special events
4 permits?

5 A. No. By the Vehicle Code. 04:55

6 Q. The next sentence says, "City medians are
7 not traditional public forum areas and are
8 inappropriate and unsafe."

9 Is that written into the City's policies
10 anywhere? 04:56

11 A. That is common sense.

12 Q. Okay. Is it written into the City's
13 policies anywhere?

14 A. No.

15 Q. Whose decision is it about whether the 04:56
16 location of an event is a traditional public-forum
17 area?

18 A. Again, it would be based on
19 transportation, the Department of Public Works, the
20 Vehicle Code and then, again, going back to what I 04:56
21 just said, common sense. There are some places
22 that are probably not safe to be having a group of
23 people congregate on, including a median of a
24 well-traveled, high-speed road.

25 Q. I'm going to mark as Exhibit -- 04:57

1	What's the next in order?
---	---------------------------

2 THE REPORTER: 270.

3 MR. ROBINSON: So I'm going to mark as
4 Exhibit 270 a multiple-page document, MP 883
5 through MP 886.

04:57

6 (Plaintiff's Exhibit 270 marked
7 for Identification.)

8 BY MR. ROBINSON:

9 Q. Let me know when it loads.

10	A. I have it.
----	---------------

04:57

11 Q. Do you recognize it?

12	A. It's an e-mail.
----	--------------------

13 Q. It's an e-mail exchange between you and
14 individuals at the Department of Justice; right?

15 A. That's correct, their firearms division.

04:58

16 Q. What was the subject of these
17 communications?

18 A. The subject was what I discussed this
19 morning regarding a request to the DOJ for
20 information on the entertainment firearms permit
21 that was produced by Mr. Zeleny.

04:58

22 Q. What were you -- what were you seeking
23 from the Department of Justice?

24 A. As I stated, again, this morning, I had
25 said I had never seen one before and I didn't know

04:58

Page 470

1 what that permit allowed. So I was asking them to
2 give me clarification on it.

3 Q. Did they eventually -- they did eventually
4 give you clarification; right?

5 A. Via the phone call that I testified about 04:58
6 this morning with the female person from DOJ.

7 Q. Mr. Zeleny appealed from the city
8 manager's decision to the city council regarding
9 his special event permit; right?

10 A. Correct. 04:59

11 Q. And there was a hearing on Mr. Zeleny's
12 appeal of the city manager's decision; correct?

13 A. Correct.

14 Q. And you represented the City staff at that
15 hearing? 04:59

16 A. Yes, myself and Nick Flegel from the city
17 attorney's office.

18 Q. I've marked as Exhibit 271 -- it looks
19 like an 11-page document, MP 1195 to MP 1205.

20 (Plaintiff's Exhibit 271 marked 05:00
21 for Identification.)

22 THE WITNESS: I have it.

23 BY MR. ROBINSON:

24 Q. Do you recognize it?

25 A. It's an e-mail with an attachment. 05:00

1 Q. It's an e-mail from you to, it looks like,
2 Jelena Herada and Clay Curtin; correct?

3 A. Jelena Herada and Clay Curtin, that's
4 correct. They are both employed by the City.

5 Q. Attached to the e-mail is a PowerPoint 05:00
6 presentation. Do you see that?

7 A. I do.

8 Q. We couldn't hear your answer.

9 A. I do see the PowerPoint.

10 Q. Is this the PowerPoint that you presented 05:01
11 at the hearing on Mr. Zeleny's permit appeal?

12 A. Yes.

13 Q. Did you put this PowerPoint together?

14 A. I did.

15 Q. Did you make the decision to include on 05:01
16 page 1199 the same image that we've discussed
17 earlier?

18 A. Yes.

19 Q. Did you think that it was relevant to the
20 city council's decision, to consider that image? 05:01

21 A. Yes. This is what Mr. Zeleny said himself
22 he'd be displaying. So, yes, it was relevant.

23 Q. At the hearing, it was suggested that this
24 image might be deemed obscene to minors; is that
25 right? 05:01

1 A. I brought up the same concern I had that I
2 brought up during the city manager's hearing, in
3 that if there was a victim, a complaining victim,
4 that the Penal Code section that I discussed with
5 the DA could have been violated. And, yes, there 05:02
6 was an issue with that.

7 Q. In your mind, as a representative of City
8 staff, was that a reason to deny the application?

9 A. Not -- not in and of itself, no, but it
10 was part of the entire record, that it was 05:02
11 important for the city council to have all the
12 facts.

13 Q. As part of the entire record, was it your
14 view that the image that Mr. Zeleny proposed to
15 display supported denial of the application? 05:02

16 A. I believed it was part of the entire
17 record, and they had the final, ultimate decision
18 on whether to uphold or overturn the appeal. And
19 this was part of the record, so that was put into
20 the PowerPoint. 05:02

21 Q. When you were at the hearing, did you
22 argue that the image that Mr. Zeleny was using was
23 an additional basis to uphold the denial of the
24 appeal?

25 A. Not that I -- as I sit here today, I don't 05:03

1 recall myself saying that it was a specific reason
2 to deny. What I believe I said was it was of
3 concern, also.

4 Q. So the PowerPoint presentation that you
5 put together does not contain the entire record of 05:03
6 Mr. Zeleny's application and appeal; does it?

7 A. Not the entire record, no. It gives
8 bullet points as to some of the timing and the
9 relevant, salient points in our -- basically, our
10 case to the city council. 05:03

11 Q. The image that Mr. Zeleny was displaying
12 was one of your salient points to the city council;
13 correct?

14 MR. MASTER: Objection. Vague and
15 ambiguous. Overbroad. 05:03

16 Go ahead.

17 THE WITNESS: That was the image that he,
18 himself, provided that was going to be displayed,
19 along with an image of a gun that he, himself,
20 provided that was going to be displayed. So, yes, 05:04
21 they were salient because they came from the
22 applicant himself.

23 BY MR. ROBINSON:

24 Q. In the appeal to the city council, you are
25 arguing in favor of upholding the denial of the 05:04

1 permit; right?

2 A. That's correct.

3 Q. Your position, on behalf of the City
4 staff, was that the city council should uphold the
5 denial of the permit; true? 05:04

6 A. That was my argument, yes.

7 Q. And you put together this presentation in
8 order to support your argument the city council
9 should deny -- should uphold the denial of the
10 permit; right? 05:04

11 A. Well, that was part of it. Part of it was
12 also to educate them as to the entire history of
13 this situation, with bullet points describing each
14 step that was taken, what was being contemplated in
15 the special event, et cetera. So it was both 05:04
16 informational and also put together to bolster
17 my -- our case to the city council.

18 Q. Was it your intention, at the time that
19 you put this presentation together, to include the
20 image to assist you in convincing the city council 05:05
21 to uphold the denial of Mr. Zeleny's permit?

22 A. As I've already stated, the images that
23 were in the PowerPoint were provided by Mr. Zeleny
24 himself. So they were put in because they were
25 provided by Mr. Zeleny as an example of what he 05:05

1 intended to do. That is information that the city
2 council, in my opinion, needed to have, provided by
3 the applicant himself.

4 Q. Some of the information that the city
5 council needed to have, in your view, was this 05:05
6 image that Mr. Zeleny proposed to display; is that
7 fair?

8 MR. MASTER: Asked and answered. You're
9 asking the same question over and over again.

10 One more time. 05:06

11 THE WITNESS: Both images were provided by
12 Mr. Zeleny as to what he would plan to display as
13 part of his, quote, unquote, special event, and
14 that was important, salient information that the
15 city council should know. 05:06

16 BY MR. ROBINSON:

17 Q. Did you include the photo of the gun for
18 the same reason?

19 A. I did just say that, Counsel; I did. I
20 said both photos. 05:06

21 MR. MASTER: We've been going for an hour.
22 Let's take a couple of minutes.

23 And then how much time do we have left?

24 MR. ROBINSON: We can take a couple of
25 minutes. We're -- there's a fair amount of 05:06

1 information to go over.

2 How are we on time on the record?

3 THE VIDEOGRAPHER: We've been on the
4 record for five hours and 20 minutes.

5 MR. ROBINSON: Okay. So I will try to 05:07
6 finish within the seven-hour limit provided. I
7 think that's feasible at this point.

8 THE VIDEOGRAPHER: Would you like to go
9 off the record?

10 MR. MASTER: It will be feasible within 05:07
11 seven hours. Without question, that will happen.

12 THE VIDEOGRAPHER: Going off the record.
13 The time now is 5:07.

14 MR. ROBINSON: Hold on, before we go off
15 the written record. 05:07

16 THE VIDEOGRAPHER: Okay.

17 MR. ROBINSON: So for purposes of the
18 record, as I said, I'm going to try to complete
19 this in a total of seven hours of on-the-record
20 time, as a courtesy. We did not use up our seven 05:07
21 hours of on-the-record time at the first day of
22 deposition, and so we're entitled to complete a
23 total of 14 hours, two days, per our agreement with
24 the City.

25 So we'll take the time that we need. And 05:08

1 I would appreciate if my offer to try to complete
2 it in seven hours of on-the-record time today, as a
3 courtesy, were not misconstrued as some concession
4 that you can terminate the deposition before we are
5 done with our 14 hours. 05:08

6 I guess Mr. Master is not on audio
7 anymore.

8 Okay. We can go off the record.

9 THE VIDEOGRAPHER: Going off the record.
10 The time now is 5:03. 05:08

11 (Off the record.)

12 THE VIDEOGRAPHER: Back on the record.

13 The time now is 5:15.

14 BY MR. ROBINSON:

15 Q. Chief Bertini, I uploaded a document. The 05:16
16 file name is 170829 - Staff Report, previously
17 marked as Exhibit 79.

18 Did you participate in -- did you
19 participate in preparing this report?

20 A. Yes. The city attorney, Nick Flegel, and 05:16
21 I prepared it. I gave City Attorney Flegel
22 information that he requested for the staff report.

23 Q. And was this presented to the city council
24 in connection with Mr. Zeleny's appeal?

25 A. Yes. All items that go to the city 05:16

1 council have a staff report attached to it, and
2 this is a staff report.

3 Q. The city council upheld the denial of
4 Mr. Zeleny's permit; right?

5 A. Correct. 05:16

6 Q. At any point in the process, from the date
7 that Mr. Zeleny submitted his permit application to
8 the date that the city council upheld the denial,
9 did the City make any offer or proposal to
10 Mr. Zeleny that he could have accepted that would 05:17
11 have allowed his permit to go -- his permit
12 application to be approved?

13 A. I've already testified to that. As I
14 stated, each letter of denial had points where the
15 City -- whether it was the city manager or 05:17
16 community services director or city manager and
17 city council -- stated that there were issues with
18 the permit and if Mr. Zeleny had addressed those
19 issues, logically, one could conclude that the
20 permit could have been granted. 05:17

21 Q. Did the City ever -- I understand that the
22 City raised issues, and I understand your testimony
23 that if Mr. Zeleny had addressed those issues, the
24 City may -- may have granted the permit. My
25 question was a little different. 05:18

1 Was there ever a point in time, in this
2 process where Mr. Zeleny was applying for a permit,
3 that the City presented to him a comprehensive
4 proposal that said, If you make these changes to
5 your application, we will approve it? 05:18

6 A. No. As I stated earlier, I believe --
7 again, I'm -- my recollection is not 100 percent as
8 to whether it was for the special event or the film
9 permit, but I know there was some discussion about
10 if you just -- you know, we can discuss ways to be 05:18
11 able to accommodate you, but I don't remember
12 whether that was the special event or the film
13 permit.

14 Q. So let's set aside an invitation to
15 discuss ways around it or ways to get it approved, 05:19
16 and let's set aside raising issues that Mr. Zeleny
17 needed to address.

18 Was there ever a time, in the special
19 events permit application process, that the City
20 made a suggestion to Mr. Zeleny along the lines of, 05:19
21 If you do these things, we'll approve your
22 application?

23 A. Aside from what I've already testified to,
24 no.

25 Q. I'm going to now copy another previously 05:19

1 marked exhibit into the exhibit folder. And the
2 file name is Film Permit Guidelines, previously
3 marked as Exhibit 35.

4 Let me ask you a couple of background
5 questions. 05:20

6 At some point, Mr. Zeleny, after the city
7 council denied the special events permit, he asked
8 that it be reconsidered as a film permit; correct?

9 A. Yes. I believe that suggestion came from
10 the city attorney's office. 05:20

11 Q. And Mr. Zeleny then commenced the process
12 of applying for a film permit instead of a special
13 events permit; right?

14 A. Correct.

15 Q. So please take a look at the exhibit I 05:20
16 mentioned, the Film Permit Guidelines, previously
17 marked as Exhibit 35.

18 A. I see it.

19 Q. It's a two-page document, MP 5241 and
20 5242; is that correct? 05:21

21 A. Correct.

22 Q. Are these the City's written guidelines
23 for issuing film permits?

24 A. Yes.

25 Q. Aside from this document and the contents 05:21

1 of the actual film permit application itself, are
2 there any other written policies, procedures or
3 guidelines in the City of Menlo Park about issuing
4 film permits?

5 A. No. 05:21

6 Q. Were there any written guidelines at the
7 time that Mr. Zeleny applied, other than this
8 document and the contents of the application
9 itself?

10 A. Well, it also speaks about having to get a 05:21
11 one-day business permit, too.

12 Q. So let's leave that aside. Aside from the
13 one-day business permit requirement, the total of
14 the written policies of the City of Menlo Park
15 concerning film production permits at the -- go 05:21
16 ahead.

17 A. I didn't say anything.

18 Q. There was feedback, I guess.

19 At the time Mr. Zeleny applied for a film
20 permit, leaving aside the business license issue, 05:22
21 this document that we're looking at, Exhibit 35,
22 and the permit application itself contained all of
23 the written policies of the City of Menlo Park;
24 correct?

25 A. Correct. 05:22

1 Q. Were there any unwritten policies at that
2 time?

3 A. There are no unwritten policies, but,
4 again, just like the special event permit, laws are
5 still applicable, whether they be local, state or 05:22
6 federal.

7 Q. In the ordinary course of processing film
8 permit applications, who makes the decision -- the
9 initial decision of whether to grant or deny?

10 A. That is through the public works 05:22
11 department.

12 Q. Is there a particular -- at the time
13 Mr. Zeleny applied, was there a particular person
14 in public works who made that decision?

15 A. There was somebody assigned to that role, 05:23
16 and that was Ivan Toews, or Toews. I'm not sure
17 how you pronounce it.

18 Q. What criteria -- at the time that
19 Mr. Zeleny applied for a film permit, what criteria
20 did the City consider in whether to grant or deny a 05:23
21 film permit?

22 A. The criteria that you see on the document
23 that we're discussing right now.

24 Q. What criteria are you referring to on the
25 document? 05:23

1 A. Nos. 1 through 10.

2 Q. So let's start with No. 1. No. 1 requires
3 the permit team to submit in writing all pertinent
4 details. Do you see that?

5 A. I do. 05:24

6 Q. Let me ask you a different way.

7 If the person seeking a permit complies
8 with all of these requirements, is the City
9 required to grant a permit?

10 MR. MASTER: Vague and ambiguous. 05:24
11 Overbroad. It's an incomplete hypothetical and
12 calls for speculation.

13 Go ahead.

14 THE WITNESS: No, I don't think the
15 City -- to my knowledge, the City is not required 05:24
16 to issue any permit.

17 BY MR. ROBINSON:

18 Q. So if a person seeking a permit complies
19 with all of the requirements listed in this
20 document, how does the City decide whether or not 05:24
21 to grant the permit?

22 MR. MASTER: Vague and ambiguous as to the
23 term "requirements."

24 Go ahead.

25 THE WITNESS: These are the general 05:24

1 guidelines for a film permit in the City of Menlo
2 Park. Other guidelines would include applicable
3 laws that would be in place, depending on what is
4 being contemplated, and eventually the City would
5 come to a conclusion on whether to issue a permit 05:25
6 or not.

7 BY MR. ROBINSON:

8 Q. What would the City consider in coming to
9 a conclusion about whether they issue the permit or
10 not? 05:25

11 A. I don't understand your question. What
12 does the City consider?

13 Q. Right. What does the City consider in
14 deciding whether to issue a permit? What factors
15 does it consider? 05:25

16 A. Well, just like the special events permit,
17 time, manner, place, and all the criteria you see
18 in the document that we're discussing right now are
19 things the City would consider, along with other --
20 other factors having to do with, again, traffic, 05:26
21 public safety, the impact on residents who may be
22 living near the area of the filming. So there are
23 criteria that the City would have to look for.

24 Q. So the criteria you mentioned, one is
25 traffic; right? 05:26

1 A. Yes.

2 Q. How did the City determine whether a
3 proposed film production has a sufficient impact on
4 traffic to require denial?

5 MR. MASTER: Objection. Hold on. Vague 05:26
6 and ambiguous and overbroad. Incomplete
7 hypothetical. Lacks foundation.

8 Go ahead.

9 THE WITNESS: I don't understand that
10 question. 05:26

11 BY MR. ROBINSON:

12 Q. Traffic impact is one of the things the
13 City considers; right?

14 A. Yes.

15 Q. Is there any particular level of traffic 05:26
16 impact that would cause a permit to be denied?

17 A. There is -- it would be impossible to say
18 there's a level of traffic impact because I don't
19 even know what that means.

20 Q. Is there a certain type of traffic impact 05:27
21 that would cause a permit to be denied?

22 A. Every situation would be different. If
23 someone wanted to close a major arterial for weeks
24 on end to film a movie where there was not a very
25 easy detour around that location, that would be 05:27

1 problematic. So it would be a case-by-case basis.

2 Q. One of the things that you mentioned was
3 public safety; right?

4 A. Correct.

5 Q. Are there any public safety criteria that 05:27
6 would be applied to a film permit application, any
7 specific criteria?

8 A. Section 4.

9 Q. You mean the noise ordinance?

10 A. There's noise, explosions, pyrotechnics, 05:27
11 things of that nature.

12 Q. Other than the criteria listed in point 4
13 of Exhibit 35, are there any other public safety
14 considerations that go into whether a permit
15 application for a film permit will be granted or 05:28
16 denied?

17 MR. MASTER: I'll object to the question
18 as vague, ambiguous and overbroad.

19 Go ahead.

20 THE WITNESS: And then point No. 3 on the 05:28
21 same document.

22 BY MR. ROBINSON:

23 Q. So compliance with -- well, let's start
24 with this. On point No. 3, it refers to guidance
25 of City supervisory employees pertaining to the use 05:28

1 of city property.

2 Do you see that?

3 A. Yes.

4 Q. Is the guidance of City supervisory
5 employees pertaining to the use of city property 05:28
6 published somewhere?

7 A. I don't quite understand what you're
8 talking about. The guidance of City supervisory
9 employees. In other words, the person who is
10 having the film needs to obey the guidance of the 05:29
11 City supervisory employee that would be on the
12 scene.

13 Q. So the guidance is given on a case-by-case
14 basis?

15 A. Correct. 05:29

16 Q. Is the guidance in the discretion of the
17 city supervisory employee?

18 A. Yes.

19 Q. So other than what's listed in points 3
20 and 4 on Exhibit 35, are there any other public 05:29
21 safety considerations that go into the granting or
22 denial of a film permit?

23 A. And point No. 1 in the same document.

24 Q. Okay. Other than point No. 1, 3 and 4,
25 are there any other public safety considerations? 05:29

1 A. Five.

2 Q. Okay. So under point 5, the City -- the
3 permittee shall make arrangements for traffic
4 controls satisfactory to Menlo Park Police
5 Department. 05:30

6 Is that what you're referring to?

7 A. I am.

8 Q. Are there any set criteria, definite
9 criteria, for the arrangements satisfactory for
10 Menlo Park Police Department? 05:30

11 A. That would be on a case-by-case basis. It
12 would depend on what kind of closures they're
13 anticipating.

14 Q. So we've covered 1, 3, 4 and 5.

15 Why don't we do this: Are there any 05:30
16 public safety criteria considered in connection
17 with film permit applications that are not listed
18 on this document that we're looking at?

19 A. Only those dealing with other laws that
20 might be applicable, either local, state or 05:30
21 federal.

22 Q. Other than state, federal or local laws
23 and the points listed on this Exhibit 35, are there
24 any other public safety criteria that go into a
25 film permit application? 05:31

1 A. I believe that about covers it.

2 Q. In some instances, the City will impose
3 conditions on the permit; right?

4 A. The film permit?

5 Q. Correct. 05:31

6 A. Yes.

7 Q. How does the City come up with the
8 conditions to impose on film permits?

9 A. It depends on what the permit seeker is
10 contemplating doing. It's case by case. 05:32

11 Q. Is there an appeals process for film
12 permit decisions?

13 A. The -- to the best of my recollection, the
14 appeal process is similar to the special events.
15 That goes through the department director to the 05:32
16 city manager to the city council.

17 Q. So I'm going to introduce what we've
18 previously marked as Exhibit 74. It may show up at
19 the bottom. The file name is Film Permit -
20 Billions, 74. 05:33

21 A. Okay.

22 Q. It's, for the record, MP 1768 through --
23 it's a 12-page document, starting on MP 1768;
24 correct?

25 A. MP 1779. Yes. 05:34

1 Q. Do you recognize Exhibit 74?

2 A. No.

3 Q. Does it appear to be the format of a film
4 permit for the City of Menlo Park?

5 A. Yes. 05:34

6 Q. Does it appear that this film permit was
7 approved?

8 A. I'd have to read the entire document. I
9 don't know.

10 Q. On the first page of the document, it 05:34
11 says, Issued 11-29-2017. Does that indicate to you
12 that it was issued?

13 A. Sure.

14 MR. MASTER: Well, don't guess. Do you
15 know or not? 05:34

16 THE WITNESS: It says it was issued, yeah.
17 BY MR. ROBINSON:

18 Q. All right. So let's go down to the page
19 that's MP 1770. Is this the form of application
20 that the City of Menlo Park used in 2016 for film 05:35
21 permits?

22 A. Yes. It was a combination of the film
23 permit and the encroachment permit application.

24 Q. And in this application, it appears that
25 the applicant is seeking to film a Tesla car 05:35

1 driving on Sand Hill Road?

2 A. Yes.

3 Q. And let's take a look at the very last
4 page of this document, MP 1779. It appears that
5 the route that was being contemplated was along 05:36
6 Sand Hill Road; correct?

7 A. Correct.

8 Q. And it went from Highway 280 to Alpine
9 Road?

10 A. That is part of the route I see on the 05:36
11 map, yes.

12 Q. And that area from the 280 to Alpine Road,
13 does that cover the same section of Sand Hill Road
14 where Mr. Zeleny was proposing to protest?

15 MR. MASTER: Objection. Vague and 05:36
16 ambiguous. Overbroad.

17 Go ahead.

18 THE WITNESS: Well, you might want to
19 re-ask that because -- where he wanted to protest
20 or where he wanted to do a special event or film 05:36
21 permit? Which one?

22 BY MR. ROBINSON:

23 Q. Does it cover the same area of Sand Hill
24 Road that was contemplated on his film permit
25 application? 05:37

1 A. Yes.

2 Q. Does it cover the same section of Sand
3 Hill Road the City now claims it had no
4 jurisdiction to issue permits for?

5 A. No. This is the -- this is the actual 05:37
6 roadway, not the center median. So I would
7 disagree with you.

8 Q. Is it your understanding that the City has
9 jurisdiction over the roadway but not the center
10 median? 05:37

11 A. I can't answer that question. But most of
12 this is within the -- what is indicated here as
13 request No. 1, Menlo Park, is within our city
14 limits.

15 Q. So one of the first documents we looked at 05:37
16 today were interrogatory responses. Do you recall
17 that?

18 A. Yes.

19 Q. And you verified those interrogatory
20 responses? 05:37

21 A. Yes.

22 Q. And as part of your responses, you
23 indicated that the City had no jurisdiction to
24 issue permits for the area that Mr. Zeleny was
25 seeking permits; correct? 05:38

1 A. For the center median, for --

2 Q. I understand. That was your response,
3 right, the City had no jurisdiction over the center
4 median; correct?

5 A. Correct. 05:38

6 Q. Is it your understanding that the City has
7 no jurisdiction over the center median but does
8 have jurisdiction over the surrounding roadway?

9 MR. MASTER: Objection. Asked and
10 answered. 05:38

11 Go ahead. You can answer.

12 THE WITNESS: It is within the city limits
13 of Menlo Park. And the roadway that is being
14 contemplated in this application is all of Menlo
15 Park, then encroaching into CalTrans state 05:38
16 jurisdiction, but it's within the city limits of
17 Menlo Park.

18 BY MR. ROBINSON:

19 Q. Is the median within the city limits of
20 Menlo Park? 05:39

21 A. Yes.

22 Q. So let's take a look -- I'm going to
23 upload a previously marked Exhibit 73.

24 A. What's it called on the list?

25 Q. It's Film Permit - Sand Hill, 73. 05:39

1 A. Okay.

2 Q. For the record, 73 is MP 1772 through
3 1728; correct?

4 A. Yes.

5 Q. This is also a film permit that was issued 05:40
6 by the City of Menlo Park; correct?

7 A. Yes.

8 Q. And it also contemplates filming on Sand
9 Hill Road in Menlo Park?

10 A. Yes. 05:40

11 Q. If you go to 1726, under the "Activities"
12 section, it refers to -- it says, If possible, we'd
13 like to potentially place a camera on the median,
14 if you're okay with it.

15 Do you see that? 05:41

16 A. Yes.

17 Q. Do you know if this group was given
18 permission to place a camera on the median?

19 A. I don't know.

20 Q. Does the City have a set time frame for 05:41
21 approval or denial of film permits?

22 A. Not that I'm aware of.

23 Q. Is film permitting also a discretionary
24 decision by the City staff?

25 A. Yes. 05:41

1 Q. Do the factors that City staff takes into
2 account depend on the specific filming being
3 contemplated?

4 A. Yes.

5 Q. Is there any list of specific requirements 05:41
6 that are -- other than the documents previously
7 looked at and the film permit application itself,
8 is there any list of criteria published anywhere
9 that need to be satisfied before a film permit is
10 issued? 05:42

11 MR. MASTER: Objection. Asked and
12 answered at least a half a dozen times.

13 One more time.

14 THE WITNESS: As I stated before, the list
15 is the document that you showed me, the 05:42
16 application, and then any applicable local, state,
17 federal laws. Aside from all that, there's no
18 other listed criteria.

19 BY MR. ROBINSON:

20 Q. So I've uploaded a document previously 05:42
21 marked as Exhibit 65. The file name is 170920,
22 Bertini Re Filming.

23 MR. MASTER: What was that, again?

24 MR. ROBINSON: 170920.

25 THE WITNESS: I recognize the e-mail. 05:43

1 BY MR. ROBINSON:

2 Q. For the record, it's MP 1125, one page;
3 correct?

4 A. Correct.

5 Q. And starting about a third of the way down 05:43
6 the page, there's an e-mail from you, dated
7 September 12th, 2017?

8 A. Correct.

9 Q. You are e-mailing various people within
10 the City of Menlo Park about Mr. Zeleny's film 05:43
11 permit application; right?

12 A. Correct.

13 Q. And who is Arlinda Heineck?

14 A. She was the community development director
15 at the time. 05:44

16 Q. Were you ever able to speak with Mr. Toews
17 about Mr. Zeleny's permit application?

18 A. Yes, eventually. During this time, I was
19 out on -- I had shoulder surgery. So a few weeks
20 later when I came back to work is when I believe I 05:44
21 spoke to him.

22 Q. What did you talk about?

23 A. The film permit process.

24 Q. Did you talk to him about Mr. Zeleny's
25 special permit application? 05:45

1 A. Yes. He was already aware that that had
2 kind of articulated through the system.

3 Q. Did you talk to him about the concerns
4 that you expressed regarding Mr. Zeleny's special
5 event permit application? 05:45

6 A. Yes, I did speak to him about concerns
7 that we had in both the -- both permitting
8 processes.

9 Q. Did you have concerns about Mr. Zeleny's
10 request for a film permit? 05:45

11 A. The concerns had to do with the same
12 public safety issues and the interpretation of the
13 exception to the open-carry law, based on what he
14 was proposing.

15 Q. Did Mr. Toews agree with your concerns? 05:45

16 A. I don't recall whether he agreed or
17 disagreed. He just listened to what my concerns
18 were.

19 Q. Let's take a look at an exhibit previously
20 marked as Exhibit 36. 05:46

21 MR. MASTER: What's that one called?

22 MR. ROBINSON: It's called 171006, Film
23 Permit. I'm trying to track it down in the folder.

24 MR. MASTER: Okay.

25 MR. ROBINSON: It should show up in your 05:47

1 folder.

2 MR. MASTER: 171006?

3 MR. ROBINSON: Correct.

4 BY MR. ROBINSON:

5 Q. Are we on the same document, Chief 05:47
6 Bertini?

7 A. I have 1248.

8 Q. MP 1248; right?

9 A. Yes.

10 Q. Do you recognize that? 05:47

11 A. I recognize this as a film permit
12 application.

13 Q. This is Mr. Zeleny's film permit
14 application; correct?

15 A. Yes. 05:47

16 Q. And if you look at the -- just the first
17 page of the application, are all of the boxes
18 filled in?

19 A. No.

20 Q. What's missing? 05:48

21 A. Halfway down under the description of work
22 to be done, applicant submits the following: Three
23 copies of sketch or plans, three copies of traffic
24 control plans, insurance certificate.

25 Q. Are those requirements of the issuance of 05:48

1 a film permit?

2 A. Yes.

3 Q. The applicant has to submit a sketch or
4 plans to have a film permit approved?

5 A. For the anticipated location of the 05:48
6 filming, yes.

7 Q. And does the applicant have to submit
8 traffic control plans?

9 A. If traffic is affected, yes.

10 Q. Who decides whether a traffic control plan 05:49
11 is going to be required?

12 A. It depends on the application, what
13 they're applying to do.

14 Q. The person who decides depends on the
15 application? My question was, who decides 05:49
16 whether a traffic control plan is going to be
17 required?

18 A. It's going to be -- it's going to be the
19 public works department, based on what is being
20 contemplated in the application. 05:49

21 Q. I'm going to introduce a new exhibit. `

22 What number are we up to?

23 THE REPORTER: 272.

24 MR. ROBINSON: So I'm going to introduce
25 Exhibit 272. 05:50

1 (Plaintiff's Exhibit 272 marked
2 for Identification.)

3 BY MR. ROBINSON:

4 Q. Let me know when it comes up.

5 A. Okay. 05:50

6 Q. So Exhibit 272 is a series of e-mails. It
7 runs from MP 1290 through MP 1299; correct?

8 A. Yes.

9 Q. It's a series of e-mails between
10 Mr. Zeleny and City staff about his film permit 05:51
11 application; correct?

12 A. Yes.

13 Q. Let's start with the page MP 1292, please.
14 These are questions that Mr. Toews asked Mr. Zeleny
15 in connection with his permit; right? 05:51

16 MR. MASTER: Read the document.

17 BY MR. ROBINSON:

18 Q. The e-mail starting two-thirds of the way
19 down 1291 --

20 A. I'm reading it.

21 Q. -- and carrying over to the next page.

22 A. I'm reading it.

23 Q. So the first question Mr. Toews asked was
24 related to film dates and times. Do you see that?

25 A. Yes. 05:52

Page 501

1 Q. And if you go up to the top of this e-mail
2 chain, Mr. Zeleny answered those questions; right?

3 A. He did, but in his answer, he stated he
4 was going to not follow the direction, you know, if
5 I'm reading this correctly. 05:53

6 Q. So I'm not asking for an interpretation of
7 whether his answer was sufficient or not at this
8 point. I'm just asking whether he answered the
9 questions.

10 A. He gave an answer. 05:53

11 Q. And the next question by Mr. Toews was
12 related to the make and model of Mr. Zeleny's
13 generator, as well as the decibel rating.

14 Do you see that?

15 A. I do. 05:53

16 Q. Mr. Zeleny answered that question also;
17 correct?

18 A. Yes.

19 Q. The next question was for a draft written
20 notice. 05:53

21 A. And the question?

22 Q. Mr. Zeleny answered the next question
23 which related to a draft written notice; correct?

24 A. He gave an answer.

25 Q. Did he give an answer to all of Mr. Toews' 05:54

1 questions?

2 A. Just a second. I'll look. He did not
3 answer No. 5.

4 Q. He responded to -- strike that.

5 He responded to question 5 by saying he's 05:54
6 not going to encroach on any sidewalks or roads;
7 right?

8 MR. MASTER: Objection. The document
9 speaks for itself. Are you asking him if it's
10 sufficient or if he just responded? 05:55

11 MR. ROBINSON: You can go ahead and
12 answer, if you understand the question.

13 THE WITNESS: He responded by saying -- by
14 saying he's not going to respond.

15 BY MR. ROBINSON: 05:55

16 Q. Did the City find -- strike that.

17 Under the City's guidelines for film
18 permits, a traffic control plan is required if
19 there is going to be a need to reroute traffic;
20 right? 05:55

21 A. Not only vehicular traffic but pedestrian
22 traffic. This is what we asked in this specific
23 application.

24 Q. So Mr. Zeleny's response was, I'm not
25 planning to divert any vehicular pedestrian 05:55

1 traffic, so I don't need a traffic control plan;
2 correct?

3 A. That's what -- that's what he stated, yes.

4 Q. Did the City find that response
5 insufficient in processing Mr. Zeleny's permit 05:56
6 application?

7 A. Yes.

8 Q. Who made the decision that that was
9 insufficient?

10 A. Toews. 05:56

11 Q. Is there any objective standard that
12 applies to whether a traffic control plan is
13 required?

14 A. When traffic, either vehicular or
15 pedestrian, is affected by something encroaching 05:56
16 either on the roadway or the sidewalk, then some
17 kind of plan has to be submitted.

18 Q. Who approves the plan that's submitted?

19 A. Who approves the traffic plan?

20 Q. Right. 05:56

21 A. Well, that would be the Department of
22 Public Works in conjunction with the police
23 department.

24 Q. Are there any specific criteria that are
25 considered in approving or denying that -- 05:56

1 approving or rejecting a traffic control plan?

2 MR. MASTER: Objection. Asked and
3 answered.

4 THE WITNESS: Well, first, we have to have
5 a plan. In this case, we didn't have a plan. 05:57
6 Generally speaking, it really depends on the --
7 what is being contemplated. Again, it's a
8 case-by-case basis.

9 BY MR. ROBINSON:

10 Q. So other than No. 5, Mr. Zeleny answered 05:57
11 all of the other questions posed by Mr. Toews;
12 correct?

13 A. I'm still reading. 8 and 9 are not really
14 answers. He's just stating that as soon as the
15 City does what he wants the City to do, then he 05:57
16 will provide the information requested, which is
17 not the way the application is set up. And equally
18 is No. 10.

19 Q. At some point, Mr. Zeleny's application
20 was forwarded to the city attorney's office; 05:58
21 correct?

22 A. Yes.

23 Q. Why was it forwarded to the city
24 attorney's office?

25 A. Because Mr. Toews needed assistance in 05:58

1 dealing with the specific application here.

2 Q. Does the city attorney's office generally
3 have authority to approve or deny filming permits
4 within the city?

5 A. Certainly. 05:58

6 Q. What standards govern the city attorney's
7 office's approval or denial of the filming permit?

8 MR. MASTER: Objection. Vague and
9 ambiguous. Overbroad. Calls for a legal
10 conclusion. 05:59

11 Go ahead.

12 THE WITNESS: The city attorney's office
13 would take all the information, and, again, time,
14 place, manner, and dealing with the contemplated
15 disruption to the city and city services, and would 05:59
16 make a determination whether or not to grant a film
17 permit. It does not require -- it's not a legal
18 requirement the City grant a film permit.

19 BY MR. ROBINSON:

20 Q. Is it also a case-by-case determination? 05:59

21 A. Yes.

22 Q. And the factors that are relevant depend
23 on the specific filming project being proposed?

24 A. Correct.

25 Q. So I want to -- we've marked as Exhibit 05:59

1 273 a multiple-page document, MP 1415 through 1426.

2 (Plaintiff's Exhibit 273 marked
3 for Identification.)

4 BY MR. ROBINSON:

5 Q. Do you see that? 06:00

6 A. Yes.

7 Q. And starting -- starting at the very --
8 the very end, so 1425 to 14 -- 1424 to 1426,
9 there's an e-mail from Mr. Flegel to Mr. Zeleny.

10 Do you see that? 06:00

11 A. Yes.

12 Q. This e-mail relates to Mr. Zeleny's film
13 permit application; right?

14 A. Yes.

15 Q. And Mr. Flegel asks a number of questions 06:01
16 about the film project, in addition to the
17 questions that were already asked by Mr. Toews;
18 correct?

19 A. Correct.

20 Q. This -- the first point -- bullet point A 06:01
21 asks for confirmation of where Mr. Zeleny plans to
22 place different items that he's going to use in the
23 filming.

24 Do you see that?

25 A. Yes. 06:01

1 Q. Is that requirement listed anywhere in the
2 written guidance of the City of Menlo Park relating
3 to film permits?

4 A. Yes. It's on the application that I've
5 already discussed with you, on the box that was not 06:02
6 checked, the site schematic.

7 Q. So we looked at two permit applications
8 before, right, that were approved, the Sand Hill?

9 A. Yes.

10 Q. Do either of those include a site 06:02
11 schematic?

12 A. Yes.

13 Q. Which one included a site schematic?

14 A. The one that had the arrow on the roadway
15 that they planned to film on. 06:02

16 Q. Mr. Zeleny provided a Google Maps image of
17 where he planned to film; right?

18 A. To the best of my recollection, he did,
19 but I don't recall exactly what was on it or when
20 he submitted it. 06:02

21 Q. So you can go ahead and refer back to the
22 previous exhibit. Is it 272?

23 A. Yes. Mr. Zeleny provided a screenshot of
24 a Google map of the corner with nothing else on it,
25 just a screenshot of a Google map. 06:03

1 Q. Okay. And he indicated in his e-mail that
2 he intended to protest -- or to both protest and
3 film in that area; right?

4 A. The application was for him to film
5 himself protesting in that area. 06:03

6 Q. Okay. And in his e-mail, he explains that
7 he's going to put all of his equipment there and
8 film there. Bullet point 4 of his e-mail on the
9 first page of 272.

10 A. He writes about where he's going to put -- 06:04
11 he basically writes that he's going to put all this
12 equipment in that area, but there's no specificity
13 to where he's putting it.

14 Q. In your view, as the person designated as
15 most qualified by the City of Menlo Park, did 06:04
16 Mr. Zeleny's description of where he planned to
17 film have as much specificity as the two approved
18 applications that we've looked at?

19 A. No.

20 Q. So Mr. Zeleny taking a Google Maps photo 06:04
21 of a particular corner is less specificity than the
22 Billions permit application that said that it was
23 going to drive a 30-foot-truck over several city
24 blocks of Sand Hill Road?

25 A. Yes. 06:05

1 Q. And it had less specificity than the
2 Silicon Valley application, Exhibit 73, which said
3 that it was going to film over an entire city block
4 on Sand Hill Road?

5 A. I did not see the attachment to that 06:05
6 document, whether there was a -- a schematic or
7 some kind of map in that.

8 Q. So go ahead and pull up Exhibit 73 in the
9 folder.

10 MR. MASTER: What's that one called? 06:05

11 MR. ROBINSON: It's Film Permit - Sand
12 Hill.

13 BY MR. ROBINSON:

14 Q. And I'm looking specifically at page 1726.

15 A. Yeah, I see it. 06:06

16 Q. 1726 has an aerial Google Maps image --
17 Google Earth image of a fairly large area of Sand
18 Hill Road and some adjoining streets; right?

19 A. Yep.

20 Q. And if you go to the Menlo Park location 06:06
21 section of the same page, it says they're going to
22 shoot on the sidewalk along Sand Hill Road between
23 Sharon Park Drive and Santa Cruz Avenue.

24 Do you see that?

25 A. Yes. 06:06

1 Q. So they're going to be filming along what
2 appears to be at least one city block of Sand Hill
3 Road on the sidewalk; right?

4 A. According to the Google map where they
5 have overlaid some descriptions of where they're 06:06
6 going to be, yes.

7 Q. Can you tell from this application where
8 within that city block on the sidewalk they were
9 planning to shoot?

10 A. Between -- between Sharon Park and Santa 06:07
11 Cruz.

12 Q. Is it your position, as the designated
13 representative of the City of Menlo Park, that the
14 location of filming in this application that we're
15 looking at for Silicon Valley that has an aerial 06:07
16 view of an entire city block is more specific than
17 Mr. Zeleny's picture of the specific corner on
18 which he planned to stage his filming?

19 A. Yes.

20 Q. How so? 06:07

21 A. Mr. Zeleny did not -- if Mr. Zeleny had
22 put all the information he verbally -- or I should
23 say, he wrote into his e-mail, which was not -- no
24 specificity whatsoever. He just said that the
25 camera is going to be in the near area, and this 06:08

1 item is going to be in this area where I previously
2 protested.

3 If he had just put some items, drawn some
4 items into the map somehow, that would have
5 provided more specificity, as far as to the 06:08
6 question that was being asked about the setup,
7 where are you going to put all this equipment,
8 because that also goes to whether or not
9 pedestrians are going to be -- have to be --
10 they're going to have to alter the path if they're 06:08
11 using the sidewalk.

12 So, yes, this map actually gives more
13 information than the one provided by Mr. Zeleny.

14 Q. Do you know if the City required the
15 producers of the Silicon Valley show to point out 06:08
16 where on the sidewalk they were going to put
17 equipment?

18 A. I don't know whether that question was
19 asked or not.

20 Q. Is it -- go ahead and look at the 06:08
21 application. Is that anywhere in the application?

22 A. It's under the activity.

23 Q. Are you referring to where it says,
24 "Camera on sidewalk only"?

25 A. Correct. 06:09

1 Q. Do you have an understanding -- strike
2 that.

3 Was there any indication, that you can see
4 in this Exhibit 73, of where the ten members of the
5 camera crew were going to be standing, aside from 06:09
6 somewhere in this entire city block?

7 A. No.

8 Q. Any indication here of where they were
9 going to park the camera -- or the one van that
10 they would be using, other than somewhere in this 06:10
11 vicinity?

12 A. No.

13 Q. What about the portable restroom; any
14 indication from this application where they
15 intended to put that? 06:10

16 A. No.

17 Q. Let's go to the next -- the last exhibit
18 we opened up. So it's 273.

19 A. Okay.

20 Q. So we were going down the list of 06:10
21 questions -- we were going down the list of
22 questions that Mr. Flegel asked. Question B is:
23 Provide the names of the participants or crew that
24 will be part of the filming and his or her role,
25 including cameramen. 06:10

1 Do you see that?

2 A. I do.

3 Q. Is that -- the requirement to list the
4 names of participants, is that anywhere in the film
5 permit guidelines? 06:11

6 A. Not that I'm aware of.

7 Q. The other two applications we've seen
8 didn't list any names of crew or participants; did
9 they?

10 A. Well, not in that application that we've 06:11
11 seen. I'm not sure what other communication that
12 occurred.

13 Q. Is it a requirement of the City of Menlo
14 Park that a film permit applicant list the names of
15 the participants in the film? 06:11

16 A. That's certainly a question and a piece of
17 information that could be asked of someone.

18 Q. For what purpose?

19 A. So we can identify who is going to be
20 present at the filming of the -- of the -- whatever 06:11
21 the event is.

22 Q. Is the identity of the individuals
23 participating in the film production relevant to
24 the City's determination of whether they grant a
25 permit or not? 06:11

1 A. In this case, the city attorney believed
2 that it was.

3 Q. Did the City's guidelines allow the City
4 to grant film permits to some people but not
5 others, depending on the participants in the film? 06:12

6 A. It's discretionary for the City to either
7 grant or not grant the film permit.

8 Q. Can the City exercise that discretion
9 based upon the identity of the participants?

10 A. No. 06:12

11 Q. Do you have any understanding of why
12 Mr. Flegel was asking for the identity of the
13 participants?

14 A. No.

15 Q. Let's go down to (d)(ii) on Mr. Flegel's 06:12
16 series of questions. (d)(ii) is, "Please confirm
17 exactly what image or images you intend to show on
18 the display so staff can analyze for safety and
19 traffic control purposes."

20 Do you see that? 06:12

21 A. I do.

22 Q. Were there particular image or images that
23 Mr. Zeleny intended to display relevant to whether
24 his permit application would be granted or denied?

25 A. Yes. It would depend on the brightness of 06:13

1 the images that was being contemplated. If you
2 read the entire (d), it indicates that.

3 Q. Well, so there are two bullet points,
4 point -- romanette i and romanette ii; right?

5 A. Correct. 06:13

6 Q. Romanette i asks for the brightness of the
7 display so he can analyze for safety/traffic
8 control purposes; correct?

9 A. Correct.

10 Q. And romanette ii, a separate bullet point, 06:13
11 says, "Please confirm exactly what image or images
12 you intend to show so staff can analyze for
13 safety/traffic control purposes."

14 Do you see that?

15 A. I see that. 06:13

16 Q. That was a separate question from
17 brightness; right?

18 A. Correct.

19 Q. Do you have an understanding of how the
20 image or images were relevant to Mr. Zeleny's 06:13
21 permit application?

22 MR. MASTER: Object to the extent it lacks
23 foundation. Calls for speculation. You already
24 deposed Mr. Flegel about this.

25 Go ahead. 06:13

1 THE WITNESS: The question is regarding
2 traffic safety. So there is both brightness,
3 number one. Number two, also, what exactly is
4 being displayed and will that cause in and of
5 itself a further traffic hazard. 06:14

6 BY MR. ROBINSON:

7 Q. Would the image that we looked at several
8 times before with respect to the special events
9 permit application be an image that could distract
10 the motorists? 06:14

11 A. Any of this could distract the motorists,
12 certainly.

13 Q. So let's take a look at Exhibit E. Strike
14 that.

15 Does anything about the film permitting 06:14
16 guidelines or the application itself require the
17 applicant to identify exactly what image or images
18 he or she intends to show?

19 A. That would be on a case-by-case basis.
20 Most film permits -- most production companies are 06:14
21 not showing an image while they're filming.
22 They're just filming. This was a different
23 situation where Mr. Zeleny contemplated having some
24 kind of display and then filming people's reactions
25 to it. So, naturally, the question would be, what 06:15

1 is it that you're displaying and will it have a
2 negative effect on traffic going by. Most
3 productions do not display something.

4 Q. So this was --

5 MR. MASTER: We've been going about an 06:15
6 hour, Counselor. Can we have a break, please?

7 MR. ROBINSON: Yeah. Let me ask a
8 follow-up question or two and then we can break.

9 MR. MASTER: We're going to take a break
10 now, Damion. I want to know how much time we have 06:16
11 left so I can call my family. Do you have any
12 idea?

13 MR. ROBINSON: We have maybe 20 minutes
14 left, 15, 20.

15 MR. MASTER: All right. Let's take a 06:16
16 two-minute break. I need to use the restroom.

17 MR. ROBINSON: Okay.

18 THE VIDEOGRAPHER: Going off the record.
19 The time now is 6:16.

20 (Off the record.) 06:16

21 THE VIDEOGRAPHER: We're back on the
22 record. The time now is 6:20.

23 BY MR. ROBINSON:

24 Q. Before we broke, we were talking about --
25 I was asking you about the bullet point (d)(ii) in 06:20

1 Mr. Flegel's e-mail, in particular, his request for
2 exactly what image or images Mr. Zeleny intended to
3 show.

4 Is that criteria anywhere in the written
5 guidelines of the City of Menlo Park? 06:21

6 A. That criteria, it would be asked for, for
7 public safety. What we -- what would be logical to
8 want to know is, do you have bright, flashing
9 lights that are going to be distracting to drivers.
10 Is there going to be a lot of movement in these 06:21
11 images and what kind of images that would be
12 contemplated to be shown as people are driving by.

13 So those are the common-sense questions
14 you want to ask from a public safety perspective.

15 (Reporter clarification.)

16 (Record read by the Reporter.)

17 THE WITNESS: Common-sense public safety
18 factors about what is it that is being shown to
19 people as they're driving by that is being filmed.

20 BY MR. ROBINSON: 06:22

21 Q. Are those public safety factors that you
22 just testified about in any of the City's written
23 policies relating to film permit applications?

24 A. No.

25 Q. Are they factors that would be applied 06:22

1 depending on the specific film production that's
2 being contemplated?

3 A. Correct. As I stated prior, most film
4 productions do not have displays that are being
5 shown to the public or being filmed to find a 06:22
6 reaction. So this is unusual and it's
7 extraordinary on its face.

8 Q. Okay. So is this factor, then, the
9 specific image or images, a factor that applied
10 only to Mr. Zeleny's permit application? 06:23

11 A. Well, it would apply to anybody who wanted
12 to do what he wanted to do, to film the reaction of
13 people as he's showing some images on a display.
14 But as of today, I believe this is the only film
15 application that I've ever seen that indicates they 06:23
16 wanted to do that.

17 Q. Does the City determine what the factors
18 are -- strike that.

19 In Mr. Zeleny's case, did the City decide
20 what factors were relevant to the application after 06:23
21 Mr. Zeleny submitted the application?

22 MR. MASTER: Objection. Vague, ambiguous
23 and overbroad.

24 Go ahead.

25 THE WITNESS: I don't understand what you 06:23

1 mean.

2 BY MR. ROBINSON:

3 Q. I mean, was this a factor -- the exact
4 image or images, was this a factor that was part of
5 the City's policy before Mr. Zeleny applied for a 06:24
6 film permit, or was it a factor that was decided
7 upon based on the application he submitted?

8 A. This is a factor because of what
9 Mr. Zeleny stated he wanted to do. So because he
10 stated he wanted to have a display with some kind 06:24
11 of images on it, from a public safety perspective,
12 we don't care about the content; we couldn't care
13 less about what it is, but we need to know whether
14 it's going to be something very distracting to
15 drivers. 06:24

16 So, again, from a public
17 safety/common-sense perspective, we wanted to know
18 what kind of image are you displaying to people to
19 get a reaction from them so that you can film it.

20 Q. What kind of -- strike that. 06:24

21 Are there any standards for what kind of
22 images can be displayed and what kind can't?

23 A. Content is irrelevant. Again, I will
24 reiterate. It had to do with public safety. As
25 far as the fact he was contemplating displaying 06:25

1 something to passing motorists that could be
2 distracting -- what you are looking for is what
3 exactly are you planning to display and will it be
4 distracting, based on the movement of the display,
5 whether there's flashing lights or whether it's a 06:25
6 very dynamic kind of display that could, in fact,
7 impact traffic safety.

8 Q. My question was whether there is any
9 definite policy or guideline, from the City's point
10 of view, about what types of images, content or no 06:25
11 content, what types of images are acceptable.

12 MR. MASTER: Asked and answered, Counsel.

13 It's late in the day. Enough with the
14 nonsense. Let's cut to the chase. He's already
15 answered that question several times. 06:25

16 You can answer it one last time if you
17 have something new to add.

18 THE WITNESS: I have nothing new to add.
19 I've answered your question, and I can't give you a
20 specific, what is okay and what is not okay. It 06:26
21 depends on what exactly it is that's being
22 displayed to passing motorists, that Mr. Zeleny
23 wanted to video their reaction to it. And we had
24 no idea what that display was going to be.

25 BY MR. ROBINSON: 06:26

1 Q. So going down to bullet point E on MP
2 1425, Mr. Flegel requests: "Please list the types
3 of guns, serial numbers, who will be supplying them
4 to you, how they will be used as part of the
5 production," et cetera. 06:27

6 Do you see that?

7 A. I do.

8 Q. Is the factor of listing the serial
9 numbers of guns anywhere in the City's written
10 policies relating to the filming permits? 06:27

11 A. No. It has to do with the Penal Code.

12 Q. Is specifying the serial numbers of guns
13 to be used in the filming part of the Penal Code?
14 Is that a requirement of the Penal Code?

15 A. Well, you're only supposed to be in 06:27
16 possession of a gun that is registered to you, per
17 the Penal Code of California.

18 Q. Is there any Penal Code section requiring
19 Mr. Zeleny to identify the serial numbers of guns
20 he intends to use in a film production, that you're 06:27
21 aware of?

22 A. There's a Penal Code section that states
23 you can only be in possession of a gun that is
24 registered to you.

25 Q. Is there any written City -- written or 06:28

1 unwritten City guidelines that states that --
2 strike that.

3 Has any other film permit applicant, to
4 your knowledge, in the City of Menlo Park ever been
5 asked to provide serial numbers for guns? 06:28

6 A. I've never seen a film permit that has
7 guns in it, besides this one.

8 Q. Let's go down to bullet point H.
9 Mr. Flegel asks Mr. Zeleny to explain why live
10 ammunition would in any way be necessary for a film 06:28
11 production.

12 Do you see that?

13 MR. MASTER: That's G, Counsel, not H.

14 THE WITNESS: It's mentioned in both G and
15 H.

16 THE REPORTER: Excuse me. Can you repeat
17 your answer? I didn't hear it.

18 MR. ROBINSON: I don't think there was an
19 answer. There was an answer to a comment that
20 Mr. Master made. Let me just re-ask the question. 06:29

21 BY MR. ROBINSON:

22 Q. In bullet point H, Mr. Flegel mentions --
23 he asks why live ammunition would in any way be
24 necessary for Mr. Zeleny's film production.

25 Do you see what I'm referring to? 06:29

1 MR. MASTER: No. What page are you on?

2 MR. ROBINSON: 1426, bullet point H.

3 THE WITNESS: Yes, I do.

4 BY MR. ROBINSON:

5 Q. Is an explanation for why live ammunition 06:29
6 would be necessary for the film production any part
7 of the written policies of the City of Menlo Park
8 relating to film permit applications?

9 A. No. It would be California Penal Code.

10 Q. Is it in any part of any unwritten policy 06:30
11 of the City of Menlo Park?

12 A. No. It would be the California Penal
13 Code.

14 Q. But does the California Penal Code require
15 an applicant for a film permit to identify for the 06:30
16 film permitting authority why he intends to have
17 live ammunition in the film?

18 A. No. The California Penal Code states that
19 you cannot have live ammunition loaded into a
20 weapon. 06:30

21 Q. Okay. Does it ask why the live ammunition
22 is relevant to the film?

23 A. Does what ask?

24 Q. Does the Penal Code deal in any way
25 whatsoever with why live ammunition versus 06:30

1 ammunition that isn't live is part of the film
2 production process?

3 MR. MASTER: I'm confused.

4 If you understand the question --

5 MR. ROBINSON: Let me rephrase. 06:31

6 BY MR. ROBINSON:

7 Q. Does the Penal Code require an applicant
8 for a film permit to explain to the permitting
9 authority why he intends to have live ammunition?

10 A. No. It's just illegal to carry a loaded 06:31
11 firearm without a permit, or one of the exceptions.

12 Q. Okay. Did Mr. Zeleny's film permit
13 request the City's permission to carry a loaded
14 firearm?

15 A. My understanding was that he was going to 06:31
16 have live ammunition very close to the weapons that
17 he was going to have with him.

18 Q. That wasn't my question, sir.

19 My question was whether Mr. Zeleny, in his
20 film permit, suggested that he was going to have 06:31
21 loaded weapons.

22 A. Yes. He stated, quote, loaded
23 ammunition-feeding devices.

24 Q. Do you understand what an
25 ammunition-feeding device is, sir? 06:31

1 A. Yes.

2 Q. What is an ammunition-feeding device?

3 A. It is something that you can use to
4 quickly load magazines with ammunition.

5 Q. Is an ammunition-feeding device the same 06:32
6 thing as a loaded weapon, in your view, as the
7 representative of the City of Menlo Park and a
8 33-year law enforcement officer?

9 A. No.

10 MR. MASTER: Objection. You're being 06:32
11 argumentative, Counsel. Be professional, please.

12 MR. ROBINSON: You can go ahead and
13 answer.

14 THE WITNESS: I answered "no."

15 BY MR. ROBINSON: 06:32

16 Q. So I'm going to ask again, because I don't
17 think the question was answered before.

18 In connection with Mr. Zeleny's film
19 permit application, was he asking for a permit to
20 film using loaded weapons? 06:32

21 A. He was asking for a permit with weapons
22 and ammunition and live ammunition on site, also.

23 Q. If the live ammunition is not loaded into
24 a weapon, Mr. Zeleny is allowed by the Penal Code
25 to have live ammunition; isn't he? 06:33

1 A. It would depend on how close it is.
2 There's case law that talks about whether
3 ammunition in a magazine attached to a weapon is
4 considered loaded or not. So it would depend on
5 the situation. 06:33

6 Q. Did -- okay. Regardless of the proximity
7 of the ammunition to the weapon, is there any
8 requirement in the Penal Code that would require
9 Mr. Zeleny to explain to the City of Menlo Park why
10 he wanted to film with live ammunition versus some 06:33
11 other type of ammunition?

12 A. No.

13 Q. And there's no policy, written or
14 unwritten, in the City of Menlo Park that would
15 require Mr. Zeleny to explain that; is there? 06:33

16 A. Again, aside from what I've already
17 discussed in the California Penal Code, no.

18 Q. So this request by Mr. Flegel is outside
19 of the written and unwritten policy of the City of
20 Menlo Park; true? 06:34

21 A. Yes.

22 MR. MASTER: Objection. That misstates
23 his testimony.

24 Go ahead.

25 THE WITNESS: This is a question of public 06:34

1 safety.

2 BY MR. ROBINSON:

3 Q. It relates to a factor that is not
4 anywhere listed in the factors for the City of
5 Menlo Park; correct?

06:34

6 A. If you think time, manner and place and
7 the manner in which he's doing it, if there's a
8 public safety concern, then it's appropriate to
9 bring that public safety concern out. And live
10 ammunition at a film shoot is a public safety
11 concern.

06:34

12 Q. Is the City of Menlo Park allowed to
13 consider any public safety concern in considering a
14 film permit application?

15 A. Certainly.

06:34

16 MR. ROBINSON: Why don't we take a
17 two-minute break here. Let me look at my notes. I
18 think I'm about wrapped up here.

19 THE VIDEOGRAPHER: Going off the record.

20 The time now is 6:35.

06:35

21 (Off the record.)

22 THE VIDEOGRAPHER: Back on the record.

23 The time now is 6:39.

24 BY MR. ROBINSON:

25 Q. Has the City of Menlo Park granted or

06:39

1 denied Mr. Zeleny's permit application?

2 MR. MASTER: You mean the film permit;
3 correct?

4 THE WITNESS: You're talking about the
5 film permit; correct? 06:39

6 BY MR. ROBINSON:

7 Q. Film permit, right.

8 A. The answer is, it's done neither. It's
9 incomplete.

10 Q. How is it incomplete? 06:39

11 A. The -- the film permit has the questions
12 that were asked -- and there's been several
13 e-mails, not just this one, between the city
14 attorney's office and Mr. Zeleny, and it hasn't
15 been cleared yet. There's been no further 06:40
16 communication with Mr. Zeleny regarding this
17 permitting process.

18 Q. My question to you is, in what way is it
19 incomplete? What's missing from the application?

20 A. A final determination. 06:40

21 Q. Other than a final determination, what is
22 missing about the application? What does
23 Mr. Zeleny need to do to get it ruled on?

24 A. I would have -- I would have to look at
25 the most recent e-mail that was sent from the city 06:40

1 attorney's office to Mr. Zeleny. The documents
2 speak for themselves. It says right on there what
3 is missing or what information that we need more
4 of.

5 Q. As the person most qualified on behalf of 06:40
6 the City, do you have any understanding at all
7 about what information is missing from Mr. Zeleny's
8 application that's required before the City will
9 make a decision?

10 MR. MASTER: Objection. Asked and 06:41
11 answered.

12 Go ahead.

13 THE WITNESS: As I sit here today, I don't
14 remember what exactly -- where we left off in the
15 process or what questions hadn't been answered, 06:41
16 without looking at the document. The documents
17 speak for themselves. It would be on the final --
18 the most recent document that was exchanged with
19 Mr. Zeleny.

20 MR. ROBINSON: Okay. I don't have any 06:41
21 further questions for you, Chief Bertini.

22 Todd, do you have any questions?

23 MR. MASTER: I do not.

24 MR. ROBINSON: I couldn't hear you.

25 MR. MASTER: We're done. 06:41

1 THE WITNESS: He said "no."

2 MR. ROBINSON: Okay. I think we'll just
3 handle the record per Code.

4 David, anything else we need to do?

5 MR. MARKEVITCH: No, not at this time. 06:42

6 MR. ROBINSON: Okay. Thank you, everyone.

7 THE VIDEOGRAPHER: Let's go off the
8 record. Going off the record. The time now is
9 6:42.

10 THE REPORTER: Mr. Master, do you want a 06:42
11 copy of the transcript?

12 MR. MASTER: Yes, I do. Thank you.

13 (Whereupon, the deposition concluded at
14 6:42 p.m.)

15 06:42

16

17

18

19

20

21

22

23

24

25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

[illegible]

Date

REPORTER'S CERTIFICATE

I, DENISE M. LOMBARDO, do hereby certify:

That DAVE BERTINI, in the foregoing deposition named, was present by videoconference and by me sworn as a witness in the above-entitled action at the time and place therein specified;

That said deposition was taken before me at said time and place, and was taken down in shorthand by me, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed into typewriting, and that the foregoing transcript constitutes a full, true and correct report of said deposition and of the proceedings that took place;

And that the aforementioned 306-page transcript meets the California minimum transcript format standards.

IN WITNESS WHEREOF, I have hereunder subscribed my hand this 3rd day of September, 2020.

Denise M. Lombardo

DENISE M. LOMBARDO, CSR No. 5419
State of California

&	12-1825 231:20	150722 395:10	1:00 350:24
& 234:4 270:18 281:4 313:5	12-495 321:16 328:10	150924 417:13 423:5 444:16	352:13
0	12020 350:16,16 350:17 351:7	1595 345:17	1:06 350:13 352:21
000480 465:2	352:14	1596 345:17	1:10 328:6
0477 465:2	120416 325:5	16 230:15	1:56 359:12
1	1205 232:20 471:19	160504 448:10	2
1 231:11 235:4 261:12,13 265:5 484:1,2,2 488:23 488:24 489:14 493:13	1248 499:7,8	160624 464:24	2 232:8 261:11 349:2 355:21 453:1
10 230:14 293:9,9 293:14 484:1 505:18	1290 232:21 501:7	16th 461:25	2/27/2019 231:18
100 261:22 333:9 335:4 374:22 480:7	1291 501:19	17 230:13	20 245:11 477:4 518:13,14
101004 290:25	1292 501:13	17-7357 229:6 235:8 278:6 310:6	2010 231:11
102 417:14,14,17 423:2 444:15	1299 232:21 501:7	170 231:21 354:7	2011 271:5 298:19
103 435:13,14,16 435:17 446:24 447:1,8,8,10,10	12:09 319:11	170829 478:16	2012 271:6 325:24 325:24 326:18 342:15,19,22 343:10 345:5 350:7,11 352:17
105 448:9 458:19 460:4	12:20 328:3	170920 496:21,24	2013 315:12,23 330:11,15 342:13 425:22
11 230:12 332:2,4 471:19	12th 497:7	171006 498:22 499:2	2014 361:24 363:12 367:17,20
11-29-2017 491:11	13 332:9	172 354:16 355:17	2015 232:8 254:14 374:8 375:12 376:13 377:3 378:22 391:5,21 393:7 400:1 401:22 407:16 408:2 417:5 421:19
1125 497:2	13th 350:7 352:17	1726 495:11 510:14,16	2016 232:16 368:20 458:24 459:1 461:25 463:21 465:9 491:20
1195 232:20 471:19	14 324:17 477:23 478:5 507:8	1728 495:3	2017 363:12 497:7
1199 472:16	1400:41 349:19	1768 490:22,23	2020 229:21 233:4 235:4 278:20
12 232:16 320:11 490:23	1415 232:23 507:1	1770 491:19	
12-1596 231:22	1424 507:8	1772 495:2	
12-1824 330:5 346:20,21	1425 507:8 523:2	1779 490:25 492:4	
12-1824-4 335:25	1426 507:1,8 525:2	179 231:21 354:7	
	1471553 330:1	18 230:17	
	14750141-1 328:11	1820 368:23	
	14771553 331:24	1858 231:23 360:6	
	14771554 336:8	1866 231:24 360:6	
	14778 347:14,23 348:4	19 336:9	
	14:29 336:8,12	1900 234:5 281:5 313:6	
	14th 350:11	1938 231:4 248:13	
	15 293:10,14 320:12 459:1 518:14	1939 248:10	
	150504 460:5	1942 249:3,19 254:16	
	1507170 373:7,11	1947 253:7	
		1950 231:4 248:10 248:14 253:14	

280:4 286:21 310:20 312:4 324:21 534:21 2049 233:18 280:20 312:20 210-6045 234:15 281:15 313:16 21353 286:23 324:23 534:23 219 232:3 365:7 21st 417:4 221 232:3 365:8 229 229:17 22nd 400:1 401:21 234 373:15 236 230:3 373:25 237 230:12 238 375:7 24 349:19 367:17 465:8 240 373:15 2460 233:18 280:20 312:20 247 231:3 25 316:8 250 231:3 247:20 247:21 248:5,12 248:16,21 249:19 251 231:5 260:11 260:14 252 231:7 265:8,9 265:12,17 253 231:9 269:17 269:18,20,23 270:14,25 254 231:11 284:7 287:1,4,8 25400 355:21 356:14 255 231:13 298:6,7 298:10	256 231:15 301:6,7 303:19 257 231:16 311:12 314:2,4,8 258 231:17 232:5 345:15,19,24,25 346:7 385:12 259 231:20 353:25 354:1,6,10 260 231:5,22 232:5 360:1,5 385:12 261 232:3 365:3,6 365:18 262 230:13 232:4 385:1,2,11 394:21 263 232:6 399:15 399:18 411:13,14 264 232:7 405:14 405:17 411:14 265 231:7 232:10 411:18,20,23 412:1 421:16 266 232:11 395:12 416:13,15,19 267 232:13 435:3,9 446:25 447:3,7 268 232:14 457:10 457:11,15 458:2,4 461:20 462:6 269 231:9 232:16 466:20,23 27 458:23 270 232:18 470:2,4 470:6 271 232:19 471:18 471:20 272 232:21 500:23 500:25 501:1,6 508:22 509:9 273 230:14,15 232:22 507:1,2	513:18 274 230:16 395:12 278 229:9 277:11 278:15 28 421:19 280 234:5 281:5 313:6 492:8,12 282 279:3 286 229:9 277:11 278:15 287 231:11 277:15 284:15 28th 400:2 296 232:6 399:19 298 231:13 2:00 350:6 352:17 2nd 407:16 3 3 230:16 261:10,11 375:8 467:9 487:20,24 488:19 488:24 489:14 30 367:8 375:23 376:2 509:23 300 232:6 399:19 301 231:15 306 534:17 310 229:12 233:20 280:22 309:17 310:15 312:22 314 311:3,12 324 229:12 309:17 310:15 325 309:22 322:13 33 368:9 403:8,9 527:8 34 311:12 314:9 345 231:17 232:10 411:24 346 412:12	35 311:13 314:9 481:3,17 482:21 487:13 488:20 489:23 350 232:10 411:24 351 417:17 352 426:6 444:18 353 426:7 354 231:20 355 417:18 36 498:20 360 231:22 365 232:3 365-7715 234:7 281:7 313:8 37 232:12 416:20 385 232:4 399 232:6 3:00 241:21 3:06 403:1 3:13 403:4 3:58 434:24 3rd 286:21 324:21 534:21 4 4 400:18,25 458:24 467:10 487:8,12 488:20,24 489:14 509:8 40 328:25 405 232:7 411 232:10 416 232:11 435 232:13 449 230:17 451 232:13 435:17 437:6 456 232:13 435:18 457 232:14 466 232:16
---	---	--	--

[47 - adjoining]

47 291:2 470 232:18 471 232:19 473 232:15 457:16 476 232:15 457:16 479 465:9 4:06 435:2	<p style="text-align: center;">6</p> 647 400:18,25 65 496:21 650 234:7 281:7 313:8 6656 231:8 265:14 265:21,22 6673 231:8 265:14 265:22 6683 231:10 269:25 6687 277:4 6688 231:10 270:1 6:16 518:19 6:20 518:22 6:39 529:23 6:42 532:9,14	93 325:15 94 325:10 94403 234:6 281:6 313:7 948 232:16 466:23 95 373:7,9 950 468:21 951 232:17 466:24 468:22 979-8700 233:20 280:22 312:22 9th 315:23	acquittal 358:15 acquitted 357:19 358:21 act 398:1,3,15 acting 298:25 299:1 317:12 462:11 action 233:7 280:8 286:8 312:8 324:8 344:17 534:7 active 292:17 316:20 activities 301:25 302:4,6 316:6 495:11 activity 315:15 316:3,9,13,13 317:4 512:22 actors 266:21 acts 276:4 actual 353:17 482:1 493:5 add 331:2 522:17 522:18 added 368:7 373:6 addition 261:17 507:16 additional 236:25 258:13 259:4 387:9 389:14 412:21 416:3 419:14 422:20 423:18 473:23 address 373:22 444:2,12 446:17 446:21 452:13 453:16 480:17 addressed 443:23 463:2 479:18,23 adjoining 510:18
<p style="text-align: center;">5</p> 5 489:2,14 503:3,5 505:10 501 232:21 507 232:22 5095 231:18 5096 231:19 51 231:14 298:11 5150 317:17 52 231:14 298:11 325:3,5,11 5241 481:19 5242 481:20 5326 232:8 405:19 5330 408:17 5331 407:1 5337 232:9 405:19 534 229:17 5380 231:15 301:10 5381 231:15 301:11 5382 231:12 287:5 5388 231:12 287:6 5419 229:19 278:18 286:24 310:18 324:24 534:24 55 407:11 5:03 478:10 5:07 477:13 5:15 478:13	<p style="text-align: center;">7</p> 7 229:21 278:20 310:20 72 317:18 73 494:23,25 495:2 510:2,8 513:4 74 490:18,20 491:1 77 465:4 79 478:17 7th 233:4 235:3 280:4 312:4	<p style="text-align: center;">a</p> a.m. 233:5 280:5 312:5 350:13 352:21 ability 267:17 331:2 463:16 able 265:1 266:19 353:14,17 413:6 439:3 440:17 442:20 480:11 497:16 academy 341:11 accept 357:25 acceptable 445:17 522:11 acceptance 358:3 accepted 479:10 access 247:23 accommodate 480:11 account 496:2 accurate 248:11 285:5 323:5 341:21 350:8 360:6 362:3 365:8 385:13 413:8 533:5 acknowledgment 408:24	
	<p style="text-align: center;">8</p> 8 505:13 81 395:10 88 325:9 883 232:18 470:4 886 232:18 470:5		
	<p style="text-align: center;">9</p> 9 286:17 505:13 90067 233:19 280:21 312:21 916 234:15 281:15 313:16		

[administrative - answer]

administrative 438:19 441:3 442:23 448:15 admonitions 236:15 ado 447:18 advice 259:12 333:7,19,21,23,25 334:1 335:6 344:4 372:17 398:19 advise 394:5 advised 390:22 444:10 advising 421:1 advisors 372:18 451:25 aerial 510:16 511:15 affeld 233:17 280:19 312:19 affirmative 342:6 aforementioned 286:17 324:17 534:17 agencies 271:11 agency 264:25 265:1 agenda 232:8 405:22,24 406:2 407:20 agitators 275:24 ago 236:13,14 238:1 245:24 401:23 407:19 agree 387:19 498:15 agreed 498:16 agreement 231:7 438:5,9 456:25 477:23	ahead 243:10,19 246:14,20 264:9 265:8 266:9 267:12 268:18 273:16 284:6 287:4 290:19 297:11 307:5,16 308:1,9,20 309:3 316:16 317:9 327:18 328:8 329:23,23 337:15 337:16 340:5,21 342:4 353:24 359:6 361:5 364:4 367:5 379:2,12 384:23 387:23 390:8 392:3 399:12 401:5 411:12 412:25 416:12 428:10 436:3 443:19 444:7 446:11 448:7 451:4,23 455:13 474:16 482:16 484:13,24 486:8 487:19 492:17 494:11 503:11 506:11 508:21 510:8 512:20 516:25 520:24 527:12 528:24 531:12 aid 275:17 aided 346:15,19 air 293:2 al 229:7 235:6 278:7 310:7 395:21 399:22 404:16 alex 462:2,15	allow 268:14 382:24 441:5 442:20 457:4,6 464:4 515:3 allowed 242:3,25 243:15,22 267:4 276:1,9 389:3 426:19 444:21 468:3,6,13 471:1 479:11 527:24 529:12 allowing 454:7 allows 267:15 268:9 453:14 468:8 alpine 492:8,12 alter 512:10 alto 407:23 ambiguous 241:1 243:8,18 250:18 263:18 264:7 266:8 267:8 288:20 297:10 305:22 306:10 307:4,15,24 308:18 327:17 337:8 338:11 339:20 342:2 364:3 369:18 370:5 372:3 378:25 379:11 382:9 389:25 390:24 391:9 410:2 412:24 413:18 415:22 428:8 430:6 443:15 446:10 451:3,21 455:12 463:12 464:12 467:15 474:15 484:10,22 486:6	487:18 492:16 506:9 520:22 amenable 440:17 amended 458:25 amendment 276:2 437:9 ammunition 315:17 524:10,23 525:5,17,19,21,25 526:1,9,16,23,25 527:2,4,5,22,22,23 527:25 528:3,7,10 528:11 529:10 amount 348:22 476:25 analysis 319:23 420:16 analyze 424:20 515:18 516:7,12 angeles 233:19 280:21 295:15,19 295:25 312:21 anger 294:6,8 angry 293:3,22,24 animation 398:1,2 annually 375:4 answer 230:9 237:15,18 241:2 245:8,13 250:19 254:21 260:21 262:5 263:1,3,7,19 267:12 273:16,19 273:23 274:18,21 282:14 287:23 288:22,23 292:7 305:23 308:2,9,11 308:20,21 309:4 315:20 317:9 318:19 320:8 337:11,13,17 339:3,4,14 342:4,6
--	--	---	--

[answer - application]

367:24 369:20 370:6 374:22 391:1,2 392:1,4 396:16 398:9,10 404:15 410:4,7 414:3 421:4 423:22 424:8 429:22 430:10 449:2,19,24 450:22 463:14 468:10 472:8 493:11 494:11 502:3,7,10,24,25 503:3,12 522:16 524:17,19,19 527:13 530:8 answered 243:20 275:17 289:9 316:1,15 317:7,7 337:7 372:17 374:21 378:25 382:20 384:19 387:22 388:11 391:25 414:25 415:1 417:11 421:23 424:5 428:23 443:2,17 444:5 476:8 494:10 496:12 502:2,8,16,22 505:3,10 522:12 522:15,19 527:14 527:17 531:11,15 answering 338:8 421:7 answers 397:14 413:20 421:20 422:2,11,16 505:14 anticipated 295:17 500:5	anticipating 489:13 anybody 300:25 330:20 360:23 382:2 520:11 anymore 322:7 368:1 478:7 anytime 307:17 309:6 appeal 269:4,8 430:21,22 431:9 432:2,8,11,14,19 432:24 433:3,8,11 433:13,23 434:1,7 436:4 441:25 442:17 446:6 447:15 448:10,16 448:19 449:3 452:20,20 458:8 458:11,16 459:1,7 459:12,25 460:8 460:13,17,25 461:3,4 462:1,2,15 464:2 465:8,18,21 465:23,24 466:2,7 467:6,9 471:12 472:11 473:18,24 474:6,24 478:24 490:14 appealed 431:12 460:16 471:7 appealing 437:5 460:23 appeals 431:6,7,18 431:20 433:6 436:21 438:16 442:24 459:15,20 459:23 464:8 490:11 appear 269:24 402:7 427:13	467:12 491:3,6 appearances 233:12 280:14 312:14 appeared 233:6 280:6 302:24 312:6 appearing 233:14 234:1,10 280:16 281:1,10 312:16 313:1,11 appears 374:1,11 399:25 491:24 492:4 511:2 appellate 244:16 applicable 246:1 246:10 250:23 340:25 427:3 483:5 485:2 489:20 496:16 applicant 248:21 249:3 258:12 374:4 375:12 376:12,23 377:2 378:11,18 379:9 379:15,20,25 380:7,13,23 409:23,25 410:23 411:1 415:20 416:4,5,9 421:4 432:10 433:20 434:4 474:22 476:3 491:25 499:22 500:3,7 514:14 517:17 524:3 525:15 526:7 application 231:3 241:8 243:6 245:18 247:1,4,15 247:18 248:18,21	249:4,25 250:15 251:1,14 252:21 253:22 254:10,13 254:18,25 255:3,7 255:17,23,24 256:1,4,7,11,17,23 257:3,6,11,13,17 258:8,23 259:9,14 259:20,25 260:1,4 260:6 268:20 269:2 364:20 368:4,18,22 369:2 369:16 371:18 372:14 373:4,7,19 374:1,8,10,13 375:13 376:9,11 377:24 378:17 379:6 382:6,13,17 382:18,23 383:3 383:13 384:15,17 386:2,8,12,21 387:1,2 388:2 389:6,9,14,16,17 389:20 390:5 391:15,23 392:9 393:9,15,21 394:1 394:7 396:10,14 396:16 397:10,15 398:4 400:20 401:24 402:3,5 406:7,22 407:12 407:24 408:19,22 408:25 409:3,9,24 412:18,22 414:22 415:11,18 417:10 418:20 419:1,25 420:9,12 422:3,23 423:21 424:3 425:4,14,16,19 427:20,24 430:22 431:2,5 432:22
--	--	--	--

[application - aside]

436:4 437:5,10,23 438:12,13 439:2 439:13,18 440:7 441:4 447:22 448:16,20 449:4,5 449:7,12,13 450:5 450:21,24 451:1 451:14 452:8,12 452:23 453:3 455:5,8,17,18 458:11,12,14,15 458:16,20,25 459:6,8 460:17,25 462:9,22 465:25 473:8,15 474:6 479:7,12 480:5,19 480:22 482:1,8,22 487:6,15 489:25 491:19,23,24 492:25 494:14 496:7,16 497:11 497:17,25 498:5 499:12,14,17 500:12,15,20 501:11 503:23 504:6 505:17,19 506:1 507:13 508:4 509:4,22 510:2 511:7,14 512:21,21 513:14 514:10 515:24 516:21 517:9,16 520:10,15,20,21 521:7 527:19 529:14 530:1,19 530:22 531:8 application's 459:12 applications 239:20 370:3 372:21 378:22	410:11,14,19,21 425:21 450:2 451:12,19 453:11 459:14,15 463:5 464:5 468:12 483:8 489:17 508:7 509:18 514:7 519:23 525:8 applied 369:10 378:23 379:7 482:7,19 483:13 483:19 487:6 519:25 520:9 521:5 applies 504:12 apply 269:12 427:6 432:3 520:11 applying 370:16 480:2 481:12 500:13 appreciate 478:1 appropriate 242:18 245:22 356:10 388:17 396:24 397:4,8 439:15 529:8 approval 240:12 240:17,24 247:11 250:9,10,22 252:9 252:24 369:1,11 409:5,8,12 414:21 424:21 462:9 467:14 495:21 506:7 approve 251:5,9 355:9 369:15 370:20 391:16 440:6 442:2,8 443:1 445:11	446:2,8 450:2 454:14 464:8 480:5,21 506:3 approved 250:24 251:10 253:3,22 257:3 354:22 355:1,4 376:15,15 382:25 383:5 393:15 415:6 421:6 439:13,19 440:2,12,15 446:19 479:12 480:15 491:7 500:4 508:8 509:17 approves 504:18 504:19 approving 443:9 443:11 504:25 505:1 approximate 274:10 approximately 237:9 293:9 361:25 april 325:24 326:17 459:1 arbiter 398:20 433:5 area 349:4,14,14 349:16 350:15,20 350:20 351:5 407:22 437:14,16 440:1 469:17 485:22 492:12,23 493:24 509:3,5,12 510:17 511:25 512:1 areas 469:7 argue 274:14 466:14 473:22	arguing 474:25 argument 475:6,8 argumentative 307:4,15,25 308:19 317:7 337:8 339:2 342:1 358:18 359:5 378:25 387:22 424:5 443:18 444:6 527:11 arlinda 497:13 armed 296:19 305:14 395:1 402:8 arrange 381:20 arrangements 489:3,9 arrest 264:4,16,16 264:24 265:2,3 267:6 333:10 334:9 335:14 arrested 288:24 289:11 290:3 arrived 348:11 352:20 arrow 508:14 arterial 486:23 articulated 498:2 aside 238:8 262:7 289:22 292:21 293:20 294:8 326:7,24 327:6 329:15 353:19 358:14 375:11 424:9 432:20 441:16 480:14,16 480:23 481:25 482:12,12,20 496:17 513:5 528:16
---	---	---	--

[asked - authority]

<p>asked 257:10 315:25 316:14 317:6 327:24 337:7 357:7,8 366:10,15 368:14 378:24 381:25 382:2,21 383:11 384:9 386:14 387:21 388:10 391:24 393:11,14 397:12,17 402:18 408:9,10 419:19 420:24 424:4 443:17 444:4 447:15 455:22 476:8 481:7 494:9 496:11 501:14,23 503:22 505:2 507:17 512:6,19 513:22 514:17 519:6 522:12 524:5 530:12 531:10 asking 259:1 260:3 262:21 274:3,5,8 306:12 306:21 333:6,7 337:13 338:1,6 340:11 343:7 380:19 382:15 383:6 389:18 390:2 391:13,14 392:10 398:6,7,18 400:21 407:5 414:24 415:16 416:25 419:14 422:8,9 428:20 440:8,10 443:7,8 448:21 458:15 471:1 476:9 502:6 502:8 503:9</p>	<p>515:12 518:25 527:19,21 asks 412:16 507:15,21 516:6 524:9,23 aspects 255:25 327:23 414:16 468:22 assess 265:1 296:22 408:6 assessed 264:11 455:4 assessment 264:15 assigned 411:17 483:15 assist 475:20 assistance 505:25 assistant 395:20 395:21 400:6,7 403:17 assisted 275:25 associated 239:4 331:8 346:20 associates 270:18 assume 421:3 445:2 attach 353:16 attached 331:4,17 331:20 373:19 375:10 418:14 423:7 472:5 479:1 528:3 attaching 437:13 attachment 471:25 510:5 attempted 257:25 259:24 452:13 459:7 attempting 318:24 364:22 453:18</p>	<p>attempts 381:19 attend 282:23 382:1 attorney 234:10 234:13,14 235:24 237:8,14 257:25 258:18,19 259:5 262:2,4,8,15,18,23 262:23,25 281:10 281:13,14 313:11 313:14,15 384:9 384:20 392:8 393:13,14 394:11 394:13,18,20 395:19,20,21,22 396:9,21 400:6,7 413:21,22 415:1 419:24 420:8,25 421:24 422:13 425:8,22 427:22 442:14 444:17 449:15,17,18,20 450:1,18,25 451:6 452:13,21 455:2 478:20,21 515:1 attorney's 237:17 257:24 258:10,15 258:22 259:8,16 260:4 261:24 262:1,22 263:7 289:1 333:7,12 372:12,13,21 373:3 381:9 382:21 383:6,12 384:2 386:11,23 386:25 387:13 392:23 393:10 394:9,14 395:6 396:21 397:13 403:23,25 404:8 409:18 410:18</p>	<p>414:24 415:10,16 418:15,23 419:18 420:19 421:12 422:19 428:24 429:9,16 436:20 436:23 438:25 449:2,11,14,23 451:11,24 452:1,4 452:8 458:19 471:17 481:10 505:20,24 506:2,6 506:12 530:14 531:1 attorneys 372:19 403:10,12,17,18 atypical 257:8 audio 320:24 321:2,4,6,7,11,14 321:15,17,24 328:9,10,12,15,19 328:25 329:25 330:5,8,12 331:3,5 331:7,8,25 332:6 332:18 333:18 335:24,25 336:1,5 336:8,10,13,15 338:12 341:20,22 478:6 august 229:21 233:4 235:3 278:20 280:4 310:20 312:4 aurora 271:19 277:4 283:1 author 428:11 429:13 authority 261:21 262:12 450:1 451:11,19 452:3 463:8,22 506:3 525:16 526:9</p>
---	---	--	--

authorize 429:21 authorized 253:18 263:11 available 434:22 avenue 510:23 aware 239:8,18,21 240:3,4 242:4,8,10 247:19 254:25 255:2 266:24 275:7 289:6 293:17 295:4 319:1,21 361:8,18 362:1 367:1,4 370:1 372:20,23 381:13,14,19 384:12,15 393:20 396:6 409:10 412:20 413:3 418:18,21,25 419:23 425:21 426:17 433:6 438:14,15 441:23 446:4 451:10 452:7,10 466:2 495:22 498:1 514:6 523:21	446:13,24 453:15 460:4,17 463:21 469:20 478:12 497:20 508:21 518:21 529:22 background 302:9 325:19 481:4 bad 307:21,24 308:6,11,15,24 ban 288:9,16 327:14 barred 394:15 based 244:12 247:8 260:3 290:17 291:16 295:22 315:15 316:3 318:1 334:8 335:6,8 340:22,23 341:18 347:20,23 348:1 352:12 355:11,19 370:23 381:22 382:18 386:11 387:24 389:17 392:8 403:21 405:12 417:7 433:22 459:9,10 462:7 469:18 498:13 500:19 515:9 521:7 522:4 bases 427:23 basically 304:17 399:1 404:17 420:25 463:18 474:9 509:11 basis 242:19 247:5 262:13 309:11 370:23 399:2 428:1 473:23 487:1 488:14 489:11 505:8	517:19 bates 231:3,8,9,12 231:13,15,18,20 231:23 232:3,4,6,8 232:10,11,13,14 232:16,18,19,21 232:22 248:8,10 269:25 271:17 298:11 311:12 314:8 354:7 375:7 416:19 435:17 465:1 bear 345:21 beat 349:12 becerra 234:11 235:24 281:11 313:12 beginning 320:9 400:17 behalf 233:14 234:1,10 235:18 280:16 281:1,10 312:16 313:1,11 373:23 422:2,11 424:1 462:11 475:3 531:5 behavior 316:23 belated 238:14 belief 403:24 404:14 450:6,9 believe 243:20 254:22 258:11 271:14,15,20 282:7,13 283:6 294:19 297:2 299:15 333:3 335:2 336:25 341:23 353:23 355:20 357:16 358:25 362:15 376:14 377:25	379:16 382:18 383:22 393:11 402:14 404:16 409:1 414:23 419:3,11,17 421:22 425:15,17 427:21,25 433:2 438:18 439:6 440:16,20 441:12 448:3 450:4 451:5 457:18 474:2 480:6 481:9 490:1 497:20 520:14 believed 316:3,3 332:23,25 333:8 356:13 437:21 473:16 515:1 believing 442:22 belongs 373:23 beneath 252:12 bertini 229:15 233:1,7 234:2 235:5 236:5,10 239:16 249:18 260:21 262:17,21 263:6 269:16 271:23 273:16 274:3,20 276:25 278:13 280:1,7 281:2 282:1 285:3 285:25 286:5 290:23 310:13 312:1,7 313:2 319:8,16 323:3,25 324:5 325:6 328:14 330:7 332:11 333:14 336:14 337:17 395:10 403:6 404:6 423:5 478:15 496:22
b			
b 231:1 232:1 311:10 348:1 376:10 513:22 back 244:23 249:10,15 251:19 258:7 270:10 276:22,25 294:20 319:13,16 328:5 329:3,24 337:9 342:7 346:5 359:14 383:18 403:3 406:9 409:21 423:2 435:1 444:15			

<p>499:6 531:21 533:3,25 534:5 bertini's 231:5 260:17 best 320:12 368:5 368:19 377:7 407:18 409:1 420:10 433:2 490:13 508:18 beyond 268:16 303:14 424:7 bill 395:22 396:9 billions 490:20 509:22 binder 270:15,24 271:2,3,7,13,24 272:5,12,15,16,17 272:21 273:2,3 277:9 362:21 binders 273:6 274:6,23,25 birthday 366:12 453:19 454:9 bit 260:8 304:25 315:4 407:20 438:3 457:14 block 453:19 456:21,22,25 457:2,8 467:24 468:2,3,4,6,9,12 468:13,18,19 510:3 511:2,8,16 513:6 blocking 239:6 276:6 453:24 blocks 509:24 bob 255:8 bolster 475:16 booted 345:21 346:5</p>	<p>bottom 249:21 250:3 304:5 325:15 367:16 368:11 376:18 426:6 490:19 bound 229:10,13 277:13 309:19 boundaries 263:21 box 380:13 408:18 508:5 boxed 386:1 boxes 252:9,13,16 374:12,20 499:17 brackett 314:23 321:16 328:10 brand 304:15 brandell 435:25 442:16 465:11,14 465:19 brandell's 466:3 break 249:10 276:16 319:7 327:25 359:10 402:22 434:17 518:6,8,9,16 529:17 briefing 271:19 277:5 282:24,25 283:2,3 briefly 238:14 bright 519:8 brightness 515:25 516:6,17 517:2 bring 302:2 529:9 bringing 304:14 304:17 brings 420:25 broke 249:18 466:15 518:24 brought 257:23 300:17 343:15</p>	<p>366:11 425:5 473:1,2 bryan 301:17,19 bullet 380:22 397:16 442:5 474:8 475:13 507:20 509:8 516:3,10 518:25 523:1 524:8,22 525:2 burt 298:15 busier 244:11 business 291:20 292:4 452:2 482:11,13,20</p> <hr/> <p>c</p> <hr/> <p>cad 231:18 346:15 350:5 351:3,4,9,18 352:12,15 california 229:2 233:19 234:6 235:8 263:23 264:13 266:6,17 278:2 280:21 281:6 286:12,18 286:25 287:16,20 288:5 310:2 312:21 313:7 324:12,18,25 327:15 381:23 427:12 428:4 523:17 525:9,12 525:14,18 528:17 534:12,18,25 call 297:3,16,25 337:23 338:6 340:13,22 347:8 347:19 349:17 352:15 356:21 380:7,15,25 404:12 408:6</p>	<p>416:10 429:16 447:8 471:5 518:11 called 264:12,20 268:24 282:2 296:19 302:11 330:18 347:8 376:1 494:24 498:21,22 510:10 calling 305:13 309:9 calls 258:17 262:24 263:17 264:8 267:9 275:17 288:20 297:7,13,18,22 302:25 303:5,8,10 303:11,15 305:15 305:19 306:22,24 307:1,8,12,18,22 308:7,15 340:5,20 358:19 359:5 369:18 381:14,18 381:20 404:4 405:4 415:22 428:8 430:4,5 443:16 451:21 463:13 464:12 484:12 506:9 516:23 caltrans 494:15 camera 495:13,18 511:25 512:24 513:5,9 cameramen 513:25 camino 244:8 capacity 236:22 451:18 capitalist 406:14</p>
---	--	---	---

[caption - chief]

<p>caption 260:15,16 261:2</p> <p>car 491:25</p> <p>care 269:5 521:12 521:12</p> <p>carried 361:11,12 361:19 397:19</p> <p>carries 248:24 265:14 437:6</p> <p>carry 267:18 268:15 276:2 287:16,19,22 288:4,6,9,11,15 315:16 327:14 330:18 336:20,24 337:2,5,19,20 338:3 346:18 359:2 360:13,20 361:23 395:16 396:1 427:11 428:3,21 429:4,6 450:13 498:13 526:10,13</p> <p>carrying 261:11 264:23 288:14 289:5,16 292:14 341:23 342:16 355:21 362:1 413:11 426:6 427:15 428:16 429:11,20 430:1 467:9 468:22 501:21</p> <p>cartoon 400:12</p> <p>case 229:6 231:22 235:8 242:19,19 245:15,15 247:4,4 260:15,16 271:13 271:25 278:6 284:3 288:25 292:2 321:1</p>	<p>330:24,25 331:1,3 331:4,9,19,19,20 333:9,11 334:22 336:4 343:4 345:11 346:18,21 346:21 350:21 351:5 354:13 356:9,17 357:10 357:11,12 358:25 360:12,14,19,20 361:9,13,16 362:24 370:23,23 377:6 388:5 397:18 399:2,2,2 402:6,7 404:19 405:10,11 418:1 445:23 454:24 455:4,4,6,6 460:13 474:10 475:17 487:1,1 488:13,13 489:11,11 490:10 490:10 505:5,8,8 506:20,20 515:1 517:19,19 520:19 528:2</p> <p>cases 276:7,8 330:8,13 380:18 452:1</p> <p>catalogued 427:2</p> <p>catch 362:10</p> <p>categorized 331:9</p> <p>category 247:6</p> <p>cause 233:9 264:16 265:2 280:10 312:10 486:16,21 517:4</p> <p>caused 302:13 355:25 383:2 384:17 453:20</p> <p>causing 318:7</p>	<p>caveat 389:18</p> <p>celebration 299:22</p> <p>center 303:3 445:8 493:6,9 494:1,3,7</p> <p>century 233:18 280:20 312:20</p> <p>ceo 463:18</p> <p>certain 295:14 331:14 343:8 366:12 468:3 486:20</p> <p>certainly 245:23 252:18 262:4 271:21 273:2 282:14 351:20 370:17 380:9 431:5 450:3 456:20 506:5 514:16 517:12 529:15</p> <p>certificate 286:1 324:1 499:24 534:1</p> <p>certified 233:5 280:6 286:11 312:6 324:11 534:11</p> <p>certify 285:4 286:4 323:4 324:4 533:4 534:4</p> <p>cetera 250:12 251:17 316:22 424:25 428:24 454:2 456:16 475:15 523:5</p> <p>chain 365:13,17 435:24 502:2</p> <p>chaired 461:2</p> <p>change 285:9 323:9 347:18,20 347:23,25 350:19</p>	<p>351:8,16 353:18 390:13 533:9</p> <p>changed 349:3 350:15,24 351:20 352:15 428:2 442:20</p> <p>changes 353:3,6,9 353:15,20,22 367:1 480:4</p> <p>characterized 308:25</p> <p>charge 244:24 375:16 411:10</p> <p>charges 351:20 398:20</p> <p>charging 335:11</p> <p>charlene 314:23</p> <p>chase 522:14</p> <p>check 252:13,16 253:22 349:16 351:6</p> <p>checked 375:4 508:6</p> <p>cherise 435:24 442:15 465:11</p> <p>chief 229:15 233:1 233:6 234:2 235:5 236:5,10 239:16 249:18 255:6,6,8,9 255:11,20,21 256:5 260:21 262:17,21 263:6,9 269:16 271:23 273:16 274:3,20 276:25 278:13 280:1,7 281:2 282:1 285:3,25 286:5 288:1 290:23 301:19,21 302:2,7,20 304:9 310:13 312:1,7</p>
--	--	--	--

[chief - city's]

313:2 319:8,16 323:3,25 324:5 328:14 330:7 332:11 336:14 337:17 342:24 343:13,14,21 359:23 395:7,23 403:6 404:6 436:1 478:15 499:5 531:21 chief's 255:4 362:19 child 398:14 chp 264:13 circled 386:1 circulate 250:15 circulated 254:14 254:18,19,22 255:1,10,11 circumstances 335:9 405:13 440:11 cite 397:20 400:14 cited 356:22 cities 275:19 city 231:3,7 234:1 235:22 236:23 238:25 239:3,21 239:23 241:8 242:12 243:14 244:3 249:24 250:2 254:15 257:15,24,25 258:10,14,18,22 259:5,8,16,23 260:4,5 261:17,20 261:23 262:1,8,22 262:22,23 263:9 263:14,20 264:19 265:6 267:6 269:4 271:25 274:23	275:1,14,22 276:1 281:1 283:15,17 287:13 288:3,10 297:7 299:10,13 305:2 313:1 318:24 319:18 320:19,25 321:14 321:18 326:9,18 327:8,9 330:4,7,13 345:16 356:20 358:6,9,13 361:8 361:13,20 362:2 363:8 364:7 365:23 366:1 367:13 368:1,3 371:3 372:7,11,12 372:13,15,19,21 373:2 377:8,21 379:23 380:6,24 381:9,10,25 382:5 382:11,16,21 383:2,6,12 384:2,8 384:13,20 386:7 386:11,19,23,24 386:25 387:6,11 387:12 388:9,13 389:5,13,16 390:5 391:21 392:8,23 393:8,10,13,14 394:6,9,14,18,20 395:22 396:8,13 396:18,20,21 397:7,13 401:23 409:18 410:18 413:21,21,24 414:9,19,23 415:1 415:3,9,15,18 418:15,23 419:18 419:24 420:8,19 420:19,24 421:12 421:21,24 422:1	422:10,13,15,19 424:1,14,17 425:8 425:22 426:14,19 427:18,22 428:5 428:14 429:9,10 429:16,19,24 430:19 431:18,20 431:23,24 432:25 433:3,4,5,23 434:4 434:7,13 436:20 436:23 437:1,21 438:9,15,22,25 439:5,11,14,16,25 440:5,9,10,13 441:4,16,18 442:1 442:6,14,16,17,25 443:5,10 444:1,17 445:9 446:22 447:15,25 448:3 448:19 449:2,10 449:14,15,16,18 450:1,18,25 451:6 451:11,13,16,18 451:24 452:1,2,4,4 452:8,12,21,22 453:10 454:15 455:2 458:5,19 459:6,7 462:2,14 462:15,18 463:4,6 463:10,15,17,18 463:20,22,24,25 464:1,3,6,7,9,14 464:19 465:22 466:3,11 467:13 469:6 471:7,8,12 471:14,16 472:4 472:20 473:2,7,11 474:10,12,24 475:3,4,8,17,20 476:1,4,15 477:24 478:20,21,23,25	479:3,8,9,15,15,16 479:17,21,22,24 480:3,19 481:6,10 482:3,14,23 483:20 484:8,15 484:15,20 485:1,4 485:8,12,13,19,23 486:2,13 487:25 488:1,4,5,8,11,17 489:2 490:2,7,16 490:16 491:4,20 493:3,8,13,23 494:3,6,12,16,19 495:6,20,24 496:1 497:10 501:10 503:16 504:4 505:15,15,20,23 506:2,4,6,12,15,15 506:18 508:2 509:15,23 510:3 511:2,8,13,16 512:14 513:6 514:13 515:1,3,6,8 519:5 520:17,19 523:25 524:1,4 525:7,11 527:7 528:9,14,19 529:4 529:12,25 530:13 530:25 531:6,8 city's 257:24 258:18 262:11 366:24 367:1 368:13 388:21 416:1 420:22 430:14,15,23 469:3,9,12 481:22 503:17 514:24 515:3 519:22 521:5 522:9 523:9 526:13
---	---	---	--

[civil - complete]

civil 317:16 318:2 civilly 318:10,25 319:19 claim 437:10 447:22 claims 493:3 clarification 260:3 268:25 399:14 471:2,4 519:15 clarifications 252:2 clarify 243:12 340:11 clarifying 251:22 clarity 447:2 clay 472:2,3 clean 239:17 cleanup 374:25 375:1 clear 246:20 329:2 348:13,22,24 357:3 389:9 400:14 cleared 530:15 click 248:1 client 237:14 258:19 262:2,25 394:11,13 449:20 close 328:25 454:9 486:23 526:16 528:1 closed 349:21 closing 366:13 456:16 closures 489:12 code 317:18 333:6 334:4,7 340:12 341:1 350:17 351:7 356:14 397:21 400:13,25 467:18,18 468:8	469:5,20 473:4 523:11,13,14,17 523:18,22 525:9 525:13,14,18,24 526:7 527:24 528:8,17 532:3 collected 272:9 collecting 271:24 collective 344:6 356:15 384:1 collectively 344:16 344:19 356:8 colorado 271:19 277:5 283:1 column 252:7 260:16 347:1,21 348:16 combination 491:22 combined 244:19 come 300:19 302:10 356:1 358:20 373:10 392:11 398:18 413:20 418:1 429:5 445:3 461:1 485:5 490:7 comes 243:25 404:22 501:4 coming 275:12 294:20 298:23 300:2 319:8 394:25 485:8 command 288:2 356:24 395:7 commander 255:12 298:20,25 299:1,5,8 304:15 304:23 305:11 306:6 308:14,23 316:7 341:15	355:9 366:15 395:7 commanders 255:12 275:2 commenced 481:11 commencing 233:4 280:4 312:4 comment 253:21 524:19 comments 253:23 commit 318:11,25 362:13 commitment 317:18,21 commitments 317:16 318:2 committed 290:1 329:16 358:1,6 359:1 committee 327:3 327:10 366:14,16 366:18 369:3,12 369:15 370:2,13 370:20,25 371:1,5 371:9,11,12,21 409:4 430:23 431:2,7,8,22 432:2 453:15 459:20,23 459:24 460:1 461:1,18,23 462:10 committing 276:3 319:20 358:9,11 358:13 362:8,13 362:25 common 244:6 351:8 469:11,21 519:13,17 521:17 communicate 334:13	communicated 320:5,6 383:23,24 390:10 403:17 communication 258:7,9,19 262:2 268:7 315:14 341:9 380:21 394:12,13,14 408:5 449:21 514:11 530:16 communications 258:17 262:25 300:7 320:11 341:8 393:24 394:19 470:17 community 244:23 250:2 251:20 375:15 381:8 382:22 383:14,16 419:4 419:10 431:10,23 433:11,13 436:7 436:10 453:6,8,14 454:1,3,11,13,16 454:18,19,23 455:3,9,19 456:7,8 456:11,15,21 457:5,7 459:17 460:9,14 461:5,8 461:15 462:11 465:14 479:16 497:14 companies 303:1 406:15 517:20 company 302:11 comparison 283:21,23 complaining 300:4 473:3 complete 396:24 420:12 439:2
--	--	--	--

[complete - contemplated]

<p>477:18,22 478:1 completed 351:21 351:23 352:2 completely 359:4 374:23 375:11 completing 397:3 complex 303:3 406:15 compliance 487:23 complies 484:7,18 comply 396:18 complying 261:15 compound 267:8 338:11 340:3 342:3 413:18 443:15 comprehensive 480:3 computer 265:16 331:18 346:15,19 concealed 289:2,6 289:24 332:23 333:3 336:20,23 337:5,19 338:3,17 338:24 340:18 341:3,23 342:16 346:18 355:21 356:6 357:23 358:14,16 359:2 360:13,20 362:16 concern 292:9,12 300:18 305:11 309:7 384:7 388:1 427:11 428:1 450:6,9,11 473:1 474:3 529:8,9,11 529:13 concerned 296:13 394:18 439:10</p>	<p>concerning 262:18 282:9 482:15 concerns 251:2 256:24 320:18 394:25 450:17 468:23 498:3,6,9 498:11,15,17 concession 478:3 conclude 443:22 444:11 479:19 concluded 359:22 532:13 conclusion 263:18 264:8 267:10 356:1 358:19 359:5 428:9 430:4 443:16 451:22 464:13 485:5,9 506:10 concrete 439:11 conditionally 253:22 conditions 409:11 424:21 442:1,6,7 490:3,8 conduct 252:21 438:24 439:18 440:13 441:6 444:22 445:10 446:1,7 conducted 361:7 409:23 410:22,25 conducting 294:22 295:5 296:10 confidential 229:9 229:12 231:16 271:17 277:12,14 278:11 282:19 284:13 309:18,20 310:11 311:12,13 314:9,9,18 322:7</p>	<p>322:10,11 394:15 confirm 376:22 378:10 379:8 515:16 516:11 confirmation 507:21 confirms 378:18 380:12,14 conflating 441:9 confused 526:3 confusing 389:24 390:25 391:8 confusion 450:12 congregate 469:23 conjunction 282:16 436:19 504:22 connected 269:5 connection 239:20 243:12 254:9 268:19 269:2 271:25 288:14 292:2 320:14,25 359:1 366:20 384:16 441:19 461:19 468:2,11 478:24 489:16 501:15 527:18 consider 318:10 318:24 319:19 426:19,22 432:5 472:20 483:20 485:8,12,13,15,19 529:13 consideration 433:14 considerations 246:4,11,11 247:7 247:7 487:14 488:21,25</p>	<p>considered 242:19 289:24 318:14 338:2 397:8 427:19 452:12 459:25 489:16 504:25 528:4 considering 403:22 454:14 529:13 considers 486:13 consistency 435:17 consistent 363:5 367:22 389:12 448:18 consistently 290:14 320:18 consternation 453:21 constitutes 286:14 324:14 534:14 constitutional 288:6,11,16 consult 436:23 consulted 372:22 403:12 cont'd 232:1 contact 259:24 330:19 364:6 375:20 394:3 452:13 461:8 contacted 259:16 269:9 373:2,5 401:23 452:22 contacts 321:3 401:25 contain 474:5 contained 271:7 482:22 contemplated 241:18,20 242:14</p>
--	---	---	--

[contemplated - correspondence]

243:24 244:13 245:17 247:15 251:18 255:24 256:21 257:6,10 259:13 364:17 469:2 475:14 485:4 492:5,24 494:14 496:3 500:20 505:7 506:14 516:1 517:23 519:12 520:2 contemplates 495:8 contemplating 490:10 521:25 contemporaneous 343:19 contemporaneou... 291:13 content 274:4 282:5 294:18,19 521:12,23 522:10 522:11 contents 481:25 482:8 context 364:19 continue 326:19 392:12 continued 229:15 233:1 278:13 280:1 302:17 304:23 305:1,5 310:13 312:1 361:16 363:11 continues 277:15 284:15 309:21 322:13 continuing 248:10 457:20	contrary 426:8 control 247:2 424:20 499:24 500:8,10,16 503:18 504:1,12 505:1 515:19 516:8,13 controls 489:4 conversation 266:16 333:13 338:15,15,20,23 339:12,16 340:8 conversations 345:14 conveyed 341:22 convincing 475:20 convoluted 364:23 460:23 cooperation 290:25 cooperative 290:12,14 coordinator 250:14 252:7,20 256:14 384:3 459:16 copied 412:6,8,9 414:14 copies 499:23,23 copy 480:25 532:11 copying 367:6 corner 508:24 509:21 511:17 correct 236:19 241:5 242:20 248:12 249:1,5 251:12 252:4,5,10 253:4 255:8 259:5 259:6,17,18 265:6 265:15,18 267:1,2	268:11,15,16 269:2,10,13,14,18 270:1,2,4,7 272:6 272:7,11 286:15 287:16 288:8 291:11,21,25 292:3 293:13 294:18 295:2,6,19 296:1,17 297:1 298:11,12,16,21 302:8 304:3 305:4 306:13 314:10,24 314:25 317:19,23 318:4 320:20 321:24 322:8 324:15 325:21,22 325:24 330:16 334:18 337:23,24 338:3,9 341:17 345:25 346:24 348:25 350:9 351:3 352:6 354:8 362:22 363:1,2,12 363:13 365:20,24 365:25 367:13,14 369:7 371:24 372:9,10 373:12 373:15,21 374:2,3 374:6,13 376:12 378:12 379:9,20 381:2 385:18,20 385:24 386:9,14 386:16,21 387:1 390:23 391:23 395:14 396:19 397:10 399:20,21 400:2,5,15 406:7,8 406:19 409:20 411:24,25 412:6 412:10,11,18 413:9,12 415:20	416:5,20,24 417:2 417:6,18,22 418:4 418:5,6,7,9,12,13 422:3 423:8,11,12 428:21 431:18 433:25 434:3,6,9 434:12,14 435:18 435:22 436:5,15 436:16 441:6,8 446:22,23 449:8,9 457:16 458:6,7,9 458:21 459:3,4 465:12 466:4,8 467:3,6,7 468:1,5 468:14,15,17 470:15 471:10,12 471:13 472:2,4 474:13 475:2 479:5 481:8,14,20 481:21 482:24,25 487:4 488:15 490:5,24 492:6,7 493:25 494:4,5 495:3,6 497:3,4,8 497:12 499:3,14 501:7,11 502:17 502:23 504:2 505:12,21 506:24 507:18,19 512:25 516:5,8,9,18 520:3 529:5 530:3,5 534:15 corrections 285:7 323:7 533:6 correctly 361:24 390:20 436:21 502:5 correlate 391:11 correspondence 231:13,15 232:3,4 232:6,10,11,13,14
---	---	--	---

[correspondence - david]

<p>232:18,19,21,22 311:12 cost 298:3 council 431:24 433:4 434:8,13 442:17 452:5 471:8 473:11 474:10,12,24 475:4,8,17,20 476:2,5,15 478:23 479:1,3,8,17 481:7 490:16 council's 472:20 counsel 235:15 257:24 282:7 308:19 314:11 339:22 342:1 358:18,22 387:22 391:25 392:6 451:13,13,16,18 476:19 522:12 524:13 527:11 counsel's 274:21 counselor 263:22 290:2 423:24 430:9 443:2 518:6 counselors 259:12 422:18 county 264:14 275:17 couple 275:7 293:11,15 321:2 343:20 401:22 476:22,24 481:4 course 272:9,23 289:7 291:19 292:4 293:11,15 296:20 344:17 356:19 404:19 405:11 415:17 431:1,4 432:7</p>	<p>456:12 483:7 court 229:1 235:7 235:12 278:1 282:9,10 310:1 318:18 319:3 357:22 361:2 363:9 court's 357:25 courtesy 477:20 478:3 cover 270:17 277:13 309:19 428:18 434:22 492:13,23 493:2 covered 269:25 291:14 349:9 428:19 489:14 covering 248:8 covers 490:1 crazy 315:4,8,13 315:24 316:4,12 317:3,11 create 241:22 243:2,7 244:5,9 created 239:23 316:18 creates 244:4,18 389:1 creation 327:23 crew 513:5,23 514:8 crime 290:1,3,4,8 329:17 355:18 356:22 358:1,6,9 358:11,13,16 359:1 362:8,14,25 criminal 276:3 330:13 346:22 350:21 352:10 357:11,12 358:25 360:12,19 361:9</p>	<p>361:13,16 criteria 240:22,23 241:7,10 242:25 243:5 245:10,21 246:7,8,9 317:24 340:12 371:13 387:24 420:13 426:14 442:25 443:9,11 453:22 454:7 483:18,19 483:22,24 485:17 485:23,24 487:5,7 487:12 489:8,9,16 489:24 496:8,18 504:24 519:4,6 crowd 247:2 crr 229:20 278:19 310:19 cruz 510:23 511:11 csr 229:19 278:18 286:24 310:18 324:24 534:24 current 362:7 currently 367:23 curtin 472:2,3 cut 249:7 318:19 522:14 cutting 460:19 cv 229:6 235:8 278:6 310:6</p>	<p>344:1,5,10,13,16 344:22,23 356:7 356:18 357:8 360:15,21 398:6,7 398:15,19,22 400:22 407:6 429:8 daily 309:11 damion 233:15 235:17 273:19 274:8 276:14 280:17 284:9 312:17 328:22 332:3 346:7 434:19 447:2 457:18 518:10 danger 246:5 318:8 data 273:4 date 285:25 323:25 330:10 331:21 350:6,10 361:15 417:9 479:6,8 533:25 dated 231:11,18 232:16 400:2 458:24 497:6 dates 295:18 362:4 459:10 501:24 dave 229:15 231:5 233:1,7 234:2 235:5 236:5 260:17 278:13 280:1,7 281:2 282:1 285:3,25 286:5 310:13 312:1,7 313:2 323:3,25 324:5 533:3,25 534:5 david 233:16 235:19 280:18</p>
		<p>d</p>	
		<p>d 230:1 279:1 311:1 515:15,16 516:2 518:25 da 334:24,25 356:9 360:14 400:4 401:19 404:17 473:5 da's 334:4,11,13 342:22 343:4,6</p>	

[david - department]

312:18 329:24 330:3 331:23 385:20 416:22 532:4 day 233:4 270:8 280:4 286:21 312:4 324:21 334:14 335:3,14 345:4 350:11 398:18 417:8 477:21 482:11,13 522:13 534:21 days 343:20 477:23 deal 239:4 256:22 275:10,14 305:12 305:16 306:1 309:8 317:16 395:3 423:14 453:21 525:24 dealing 241:9 247:1 309:5 318:2 489:19 506:1,14 dealings 364:11 deals 273:2 dealt 299:14,18 403:9 410:17,22 446:14,14,15 dear 458:23 decibel 502:13 decide 387:16 394:20 484:20 520:19 decided 344:17 371:25 382:17 521:6 decides 244:17 429:10 454:12 459:20 500:10,14 500:15	deciding 452:21 453:13 455:8 485:14 decision 259:20,25 260:6 309:10 335:8,11 343:25 344:2,6 356:8,15 370:9 371:17 383:4,13,15,17,21 383:23,25 384:1,6 384:10 396:13 418:2 422:6 431:3 432:4,5,12 433:22 449:12 451:1 454:16,21 455:7 455:16 462:12 469:15 471:8,12 472:15,20 473:17 483:8,9,14 495:24 504:8 531:9 decisions 452:3 490:12 declined 251:4 deemed 472:24 defendant 231:5 234:1,10 235:21 235:23 260:17 281:1,10 313:1,11 defendants 229:8 278:8 310:8 defer 422:17 defined 387:6,11 definite 439:8 489:8 522:9 definitely 287:23 definition 390:13 396:18 420:22 denial 240:12,17 240:24 247:11 269:4 369:2,11 381:15,21 397:1,5	397:9,15 406:23 409:5,12,15,16,19 415:12 417:1,21 418:11,14,15,18 418:21,24,25 419:2,4,9,12 420:11,12 421:23 422:25 423:7,17 425:11,16,18,23 430:21,22 431:12 432:23 433:6 436:4 437:5 438:1 438:18,22,25 442:13 443:3,21 444:8,17,20 446:13,17 447:14 448:10 458:8,10 458:11,13,16,24 459:11,21 460:3 461:3,19 462:9 463:17 464:3,15 464:18,25 465:8 466:17 467:8,14 473:15,23 474:25 475:5,9,21 479:3,8 479:14 486:4 488:22 495:21 506:7 denials 442:4 denied 245:7 257:3 369:1,6 382:20 383:5 386:14 419:19 423:1 438:2 443:22 444:10 449:7 450:5,21 452:8 454:10 458:20 459:6,8 481:7 486:16,21 487:16 515:24 530:1	denise 229:19 233:5 235:13 278:18 280:5 286:4,24 310:18 312:5 324:4,24 534:4,24 deny 259:20,25 260:6 369:16 370:20 382:5,13 382:17 383:13 384:10 386:2,8,20 387:1,2 389:5,13 389:16 390:5 391:22 394:6 396:10,14 398:4 449:12 450:2 451:1,12,14,19 452:21 454:14 473:8 474:2 475:9 483:9,20 506:3 denying 392:10 415:11 426:18 427:19,23 428:1 452:11 467:5 504:25 department 231:11,17,20,22 232:7 244:21,22 250:25 251:2,8,11 251:12,14,18 253:12 254:4 263:14 264:5,13 264:20 266:17 267:15,20,22 268:8,13 270:7,10 272:10,19,20,23 275:16 283:10 287:10,21,25 289:13 291:6,8,10 291:23 294:16 297:22 298:1
--	--	---	--

[department - disallowed]

301:24 303:5,9,15 304:21 305:13,18 306:8,17,20,25 307:12,21 308:6 308:15,24 309:11 317:15 318:13,23 318:23 319:19 320:6,19 325:21 326:10,19 327:13 327:21 330:23 333:2 341:14,20 344:3 345:17 357:4 360:10 362:20 363:6 364:12 371:3,7,23 372:15 377:18 381:9 382:22 383:15,16 419:12 428:23 429:8 431:10,11,23 436:8,10 450:17 451:25 469:19 470:14,23 483:11 489:5,10 490:15 500:19 504:21,23 department's 287:22 384:7 departments 240:12 250:11,16 250:23 251:4 254:15,16,24 273:4 371:6 381:10 409:8 depend 241:17 247:14 252:3 489:12 496:2 506:22 515:25 528:1,4 dependent 245:16 depending 243:23 273:5 356:25	485:3 515:5 520:1 depends 241:19 375:21 490:9 500:12,14 505:6 522:21 deponent 230:9 234:2 281:2 285:1 313:2 323:1 533:1 deposed 238:17 516:24 deposition 229:15 233:1 235:5,9,18 236:12 237:1,21 237:25 238:4,6,9 240:10 278:13 280:1 282:16 284:14 285:5 286:6,9,15 292:8 310:13 312:1 321:7 322:12 323:5 324:6,9,15 359:21,24 367:11 368:10 421:25 446:25 457:25 458:1 477:22 478:4 532:13 533:4 534:5,9,15 depositions 238:1 238:11 457:19 deputy 234:13 281:13 313:14 400:4 describe 302:5,7 378:21 388:6 described 316:19 427:13 describing 340:10 475:13 description 499:21 509:16	descriptions 511:5 designated 283:14 384:13 413:24 422:1,10 509:14 511:12 designation 274:1 destroy 363:10 detailed 375:6,8 378:15,16 details 380:23 383:7 484:4 detective 355:6 detectives 275:3 determination 318:3,5,6 357:25 369:1 372:11 382:13 387:15 388:22 398:3 451:7 462:8 506:16,20 514:24 530:20,21 determine 242:13 244:3 317:22 340:24 391:16 401:20 428:5,25 455:18 486:2 520:17 determined 245:15 296:21 372:7 382:5 determines 429:19 determining 245:21 428:15 detour 486:25 develop 302:20 developing 366:8 development 497:14 device 331:11 526:25 527:2,5	devices 330:19 526:23 dial 249:10 dictated 444:9 different 259:3 275:5,19 357:1 358:22 369:24 372:4 455:6 462:4 479:25 484:6 486:22 507:22 517:22 difficult 357:5 364:24 388:5 difficulties 319:18 361:2 digital 330:18 diligence 257:4 396:25 397:4,9 direct 447:20 directed 430:13 directing 460:13 direction 256:8 345:2 445:5 502:4 directions 256:6 directly 337:12 410:15 452:4 director 419:12 431:10,22 433:11 433:12,19,20 459:18 460:9,14 461:5,9 462:12 465:15 479:16 490:15 497:14 directs 460:7 disabled 318:1,9 disagree 380:1 420:16 455:21 493:7 disagreed 498:17 disallowed 242:25 243:15,22
---	---	---	---

[discern - drivers]

<p>discern 338:4</p> <p>disclose 258:17 262:21,24</p> <p>discover 261:20</p> <p>discovered 261:18</p> <p>discovery 287:13</p> <p>discretion 369:2 369:12,14 370:2 370:14 455:17,22 462:10 488:16 515:8</p> <p>discretionary 455:7 495:23 515:6</p> <p>discuss 242:16 255:21 256:16 257:2 402:7 407:24 414:15 441:5,17 448:6 480:10,15</p> <p>discussed 255:23 256:1,3,20 257:1 300:16 362:16 366:19 407:15 470:18 472:16 473:4 508:5 528:17</p> <p>discusses 262:11</p> <p>discussing 257:9 262:7 300:11 400:8 483:23 485:18</p> <p>discussion 254:23 255:20 256:4,13 267:14 268:19,21 282:8 283:7 300:15 304:7 327:1 339:7 356:7 360:21 384:4,5 439:20,23 440:22 441:11 480:9</p>	<p>discussions 261:23 262:1 284:2 344:25 356:6 360:14,23 396:8 429:7</p> <p>disp 348:16</p> <p>dispatch 346:15 346:19 348:4</p> <p>dispatched 275:18 296:20 348:8,18 348:19</p> <p>dispatches 351:1</p> <p>display 397:18 398:12 407:11,11 473:15 476:6,12 515:18,23 516:7 517:24 518:3 520:13 521:10 522:3,4,6,24</p> <p>displayed 474:18 474:20 517:4 521:22 522:22</p> <p>displaying 472:22 474:11 518:1 521:18,25</p> <p>displays 520:4</p> <p>displeasure 300:12,14</p> <p>disposition 349:21 349:24,24 350:5</p> <p>disrupted 245:11</p> <p>disruption 506:15</p> <p>distract 517:9,11</p> <p>distracting 519:9 521:14 522:2,4</p> <p>district 229:1,2 235:7,7 278:1,2 289:1 310:1,2 333:7,11 395:6,19 395:20,21 400:6,7 403:10,12,17,18</p>	<p>403:22,25 404:8 428:24</p> <p>disturbance 302:14</p> <p>divert 503:25</p> <p>division 431:11 470:15</p> <p>document 231:16 247:24 248:6 254:5,6 260:15,24 261:3,7 265:13 269:15 282:5,21 282:22 287:5 291:1 301:14 309:13 326:7 327:6 339:1 340:3 345:15 346:12 347:1 365:7,10 367:6,7,18,22 368:8,20,21 370:24 373:8 374:15,17 378:14 378:21 379:11,17 383:18,20 385:12 385:15 399:19 401:4,7,15 402:11 405:3,7,19,21 424:5,9 427:21 437:7 439:6 440:4 442:9,10,10,11,13 448:12,22,24 449:2 451:5 453:1 454:25 457:24 458:18 464:23 467:2 470:4 471:19 478:15 481:19,25 482:8 482:21 483:22,25 484:20 485:18 487:21 488:23 489:18 490:23</p>	<p>491:8,10 492:4 496:15,20 499:5 501:16 503:8 507:1 510:6 531:16,18</p> <p>documents 238:8 238:10 254:8 266:1 271:25 273:3 282:11 287:12 321:20 363:22 370:7,8,11 378:19 432:20 437:24 441:1,2 442:4,12 446:13 446:14 460:24 462:24 493:15 496:6 531:1,16</p> <p>doing 272:24 288:18,24 295:8 305:14 333:5,15 456:13 457:20 490:10 529:7</p> <p>doj 268:7,19,24 269:9,11 470:19 471:6</p> <p>doj's 266:21</p> <p>doj.ca.gov 234:16 281:16 313:17</p> <p>dot 315:5,5,5,5,5</p> <p>dozen 320:11 417:23 496:12</p> <p>draft 353:3,11 502:19,23</p> <p>drain 300:18,20 305:18 308:24 309:6</p> <p>drawn 512:3</p> <p>drive 509:23 510:23</p> <p>drivers 519:9 521:15</p>
--	--	--	---

[driving - equipment]

driving 492:1 519:12,19 dropping 359:20 due 257:4 396:24 397:4,8 duly 233:8 280:9 312:8 duplicative 457:21 duration 388:8 dynamic 522:6	404:8,9,17 405:10 408:24 409:17 411:4 412:2,3,5,9 412:10,13,16 413:5 414:13 416:10,22 417:7 417:20,23 418:4 418:15,22 419:20 419:21,22 420:1,3 420:7,23 421:18 422:6,10,22 435:20,23,23 436:2,14 437:4,4,8 437:22 438:20 440:21,24 441:12 441:18 445:20 452:20 457:14 458:15,22 459:9 460:16 470:12,13 471:25 472:1,5 496:25 497:6,9 501:6,9,18 502:1 507:9,12 509:1,6,8 511:23 517:13 519:1 523:1 530:13,25 earlier 344:15 360:19 408:19 419:20 441:8,12 472:17 480:6 earth 510:17 easier 306:2 364:25 east 233:18 280:20 312:20 easy 486:25 educate 475:12 effect 301:3 303:4 303:14 337:19 376:13 399:8,9 446:1 453:25	518:2 eight 328:24 329:5 329:13 eileen 268:3 either 274:15 275:11 283:7 288:1 291:13 293:21 302:15 330:12 443:5 447:3 489:20 504:14,16 508:10 515:6 el 244:8 element 453:5 455:19 elements 454:22 455:3 emotional 307:7 employed 283:13 287:11 302:4 305:2 326:22 472:4 employee 488:11 488:17 employees 487:25 488:5,9 employment 291:7 empty 247:25 encompassed 400:13 encroach 503:6 encroaching 494:15 504:15 encroachment 491:23 ends 284:13 322:11 enforce 263:11 enforcement 264:11 271:4,9,10 272:13,21,25	273:7 294:15 395:2 403:7 406:16 527:8 engaging 316:13 317:4 enter 353:12 entered 350:5 351:5 entertainment 266:5,18,22,25 267:3 268:9,22 269:7 470:20 entire 289:17,19 335:8 344:2 374:14,17 403:10 453:19 454:13,19 468:18 473:10,13 473:16 474:5,7 475:12 491:8 510:3 511:16 513:6 516:2 entirely 400:14 entities 303:2 394:25 406:13 408:3 417:24 entitled 262:4 277:4 286:7 324:7 477:22 534:7 entity 264:11 294:15 454:2 455:24 entry 349:2,19 350:10 enumerated 440:21 442:3,18 equally 505:17 equate 391:19 392:20 equipment 424:18 509:7,12 512:7,17
e	e 230:1 231:1,13 231:15 232:1,3,4,6 232:10,11,13,14 232:18,19,21,22 255:4 260:3 279:1 296:8 298:13,14 298:14 299:20 301:16,17,22 302:1 304:9 311:1 311:10,12 314:20 314:21 315:1,3,12 315:22 316:5,12 317:3 332:16 334:4,20,21 335:2 335:2 363:22 364:23 365:12,13 365:15,18,19,22 366:6 373:18,20 373:20,22 375:21 378:1 380:3,8,15 380:20 381:1,7 382:4,21 383:8 385:16,17,19,25 386:6,20 392:16 393:1,12,19,25 394:4,6,21 395:15 395:18 396:1,5,7 396:15,23 397:12 399:25 400:10,24 401:22 403:22		

[erratic - exhibit]

erratic 315:4	371:18,19 372:9	256:16 291:14	365:1 390:18
error 461:9,11	374:1,8 375:3,7,9	299:7,16,17,19	399:6 406:23
462:13	375:13 376:3	363:17,20 364:1	408:10 420:2
escalated 459:17	387:6,10,11,17,20	364:13 366:12,23	508:19 515:17
especially 316:19	387:25 388:6,16	367:2,8,12 368:8	516:11 517:3,17
425:4	388:20,22,25	368:14 370:20,25	519:2 522:3,21
essence 299:15	389:22,23 390:6	371:8,13,20 372:1	531:14
344:6	390:12,14,15,17	373:19 381:3,11	examination 230:3
essential 453:5	390:23 391:6,7,12	384:2 410:20,21	236:9 279:3 282:4
454:22	391:18 392:21	411:11 421:2	311:3 314:1
essentially 241:10	396:19 407:25	429:3 431:2 433:7	examined 233:8
established 358:15	410:15 417:22	435:21 437:19	280:9 312:9
462:14,18 463:6,9	420:14,20,21	441:10,14 453:10	example 252:20
463:24 464:9,19	424:19,19,22	453:16,23 458:9	475:25
estimate 293:6,9	426:16,18 427:13	459:24 460:1	examples 252:1
298:3 303:12	428:6,16 429:12	461:1 463:23	439:1
320:4,12 361:22	430:23 431:6,8	467:20 469:3	exception 429:2
372:24 411:8	436:11 437:17	480:19 481:7,13	450:13 498:13
et 229:7 235:6	438:4,17,24	485:16 490:14	exceptions 526:11
250:11 251:17	439:18 440:12,13	517:8	exchange 383:8
278:7 310:7	441:6,19,24 445:6	eventually 255:19	403:22 414:13
316:21 424:25	445:7 446:1	256:13 268:1	419:22 422:22
428:24 454:2	450:11 451:12	333:25 402:2	470:13
456:16 475:15	452:9 453:14	409:19 437:1	exchanged 418:22
523:5	454:1,1,4,4,11,12	471:3,3 485:4	531:18
event 231:3	454:15,16,20,22	497:18	exchanges 381:6
239:20 241:16,17	455:9,10,17,20	everybody 340:8	409:17 420:2,4,7
241:19,20,25	456:2,4,5,6,17,23	408:9 456:11	420:23
242:7,13,18 244:4	457:5 458:25	evidence 238:3	excuse 239:14
244:7,17,17	461:17 462:10	355:19 432:18	246:15,15 318:17
245:22 246:24	465:8 467:24	exact 337:9 342:9	325:24 361:1
247:8,18 248:18	468:11,16 469:16	389:8,22 390:12	460:19 524:16
248:19,22 251:18	471:9 475:15	390:15 391:5	exercise 370:2,14
252:4,7,19 254:10	476:13 480:8,12	392:17 393:4	515:8
259:10 266:23	483:4 492:20	424:19 521:3	exercising 288:16
267:19 268:20	498:5 514:21	exactly 238:12	exhibit 231:3,5,7,9
349:1 364:16,17	events 238:23	246:20 255:19	231:11,13,15,16
364:20 365:23	239:1,5,7,24	256:3,12 257:5	231:17,20,22
366:3,20 369:3,10	240:13,18 241:4,7	259:21 294:2	232:3,4,6,7,10,11
369:12,15 370:1	242:3,23 243:13	295:7 306:20	232:13,14,16,18
370:13,14 371:15	243:16 247:11	336:21,25 339:8	232:19,21,22

[exhibit - filing]

247:20,21 248:5,8 248:12,16,20 249:19 260:11,14 265:8,9,12,17 269:20,23 270:1 270:14,25 277:3 287:1,4,8 290:19 291:1 298:6,7,10 301:6,7 303:19 311:12 314:2,4,8 314:12,15 322:5 325:3,11 345:15 345:19,24 353:24 354:1,6,10 360:1,4 360:5 363:4 365:3 365:6,18 367:8 368:7,9 373:6,9 375:23 376:2 384:24 385:2,11 394:21 395:8,9 399:15,18 405:14 405:17 411:20,23 412:1 416:13,15 416:19 417:13,13 417:14,17 419:22 421:14 423:2 435:3,6,16,17 444:15 446:24 448:9 457:9,11,15 458:4,19 460:4 461:20 462:6 465:4 466:1,20,23 467:1 469:25 470:4,6 471:18,20 478:17 481:1,1,3 481:15,17 482:21 487:13 488:20 489:23 490:18 491:1 494:23 496:21 498:19,20 500:21,25 501:1,6	506:25 507:2 508:22 510:2,8 513:4,17 517:13 exhibits 290:21,24 325:4 367:7 375:24 401:23 405:18 457:20,21 exist 239:3 exists 362:19 expected 422:4 experience 244:13 341:18 403:21 explain 251:20 524:9 526:8 528:9 528:15 explains 509:6 explanation 525:5 explosions 487:10 exposed 398:14 expressed 300:21 320:18 404:9 498:4 expressing 300:1 extent 258:17 400:19 440:17 516:22 extra 243:3 extraordinary 520:7	415:2 421:5 424:25 436:21 439:7 450:17 456:7 459:11 464:15 521:25 522:6 factor 245:14 388:8 520:8,9 521:3,4,6,8 523:8 529:3 factors 239:5 246:12 305:17 388:21 426:19 427:18 432:8 485:14,20 496:1 506:22 519:18,21 519:25 520:17,20 529:4 facts 473:12 factual 258:23 259:1,8 faint 338:1 fair 376:19 476:7 476:25 fairly 510:17 fall 400:25 familiar 254:7 266:5,8 268:5 families 453:18,18 family 453:20 454:2,8 518:11 faq 368:8,17 453:12 faqs 241:8 368:21 387:25 462:22 467:19 far 251:1 345:1 370:22 431:19 439:9 445:17 450:12 512:5 521:25	fashion 379:15 416:9 favor 466:14 474:25 feasible 477:7,10 featured 327:2 federal 246:2 363:9 370:18 427:5 463:3 483:6 489:21,22 496:17 feedback 373:3 482:18 feeding 526:23,25 527:2,5 feel 462:12 feelings 364:7 felony 231:20 female 471:6 field 275:19 figure 257:5 319:7 320:22 322:1 file 270:21,25 272:5,8,14 290:24 321:4,6,7,11,14 325:4,6 328:9,9,11 330:3 331:3,8,21 335:24 336:5,8 362:17,18 363:7 363:11,19,23 395:10 423:4 444:16 448:9 464:24 478:16 481:2 490:19 496:21 filed 235:6 398:20 files 274:25 275:5 275:11 320:24 321:2,17 329:25 330:8,12 331:5,16 filing 404:20 452:19
	f		
	f 332:15 face 256:23 364:5 364:5 379:17 380:4,4 520:7 fact 238:15 247:3 254:18 257:5 275:4 276:13 300:12 302:10,23 307:7 344:18 381:22 382:24 389:1,3 408:5		

[filled - foregoing]

filled 248:17 249:24 250:1 291:12 374:11,21 374:23 375:11 409:8 499:18 fills 248:22 film 240:3,5,6,8 241:6 363:17,20 429:4 441:9,13 480:8,12 481:2,8 481:12,16,23 482:1,4,15,19 483:7,19,21 485:1 486:3,24 487:6,15 488:10,22 489:17 489:25 490:4,8,11 490:19 491:3,6,20 491:22,25 492:20 492:24 494:25 495:5,21,23 496:7 496:9 497:10,23 498:10,22 499:11 499:13 500:1,4 501:10,24 503:17 506:16,18 507:12 507:16 508:3,15 508:17 509:3,4,8 509:17 510:3,11 514:4,14,15,23 515:4,5,7 517:15 517:20 519:23 520:1,3,12,14 521:6,19 523:20 524:3,6,10,24 525:6,8,15,16,17 525:22 526:1,8,12 526:20 527:18,20 528:10 529:10,14 530:2,5,7,11 filmed 519:19 520:5	filming 485:22 495:8 496:2,22 500:6 506:3,7,23 507:23 511:1,14 511:18 513:24 514:20 517:21,22 517:24 523:10,13 final 252:23 398:20 433:4 441:25 473:17 530:20,21 531:17 finalized 352:10 352:16,24 find 285:5 323:5 325:14 326:10 503:16 504:4 520:5 533:5 finding 257:5 300:8 fine 276:17 282:18 321:25 374:18 385:7 finish 477:6 finished 348:15 firearm 264:23 267:16,18 289:23 355:21 361:19 362:2 427:12,15 429:20 526:11,14 firearms 264:4 266:6,18,25 267:4 267:5 268:9,10,15 268:23 269:8 288:7,12,14 289:16 292:14 297:1 300:13 305:6 361:12 428:16,21 429:11 430:1 470:15,20 firm 235:11 326:4 326:15	first 233:8 244:15 244:16 248:9,20 260:15 268:22 270:13 276:2 280:8 287:15 312:8 314:22 328:15 347:1,13 353:3 366:24 373:2,5 376:17 393:19 413:10 418:3 419:25 421:10 431:25 432:1 435:12 437:9 453:2 458:16 465:5 477:21 491:10 493:15 499:16 501:23 505:4 507:20 509:9 fit 276:12 five 276:15 337:13 339:20 359:10 362:5,6,25 363:8 402:22,24 407:19 426:1 434:17 477:4 489:1 flashing 519:8 522:5 flegel 471:16 478:20,21 507:9 507:15 513:22 515:12 516:24 523:2 524:9,22 528:18 flegel's 515:15 519:1 flip 277:3 460:4 flowchart 367:8 367:12,20 376:3 376:22 378:8,9,16 380:5 416:2	flows 244:10 focus 261:16 421:18 426:3 431:25 437:7 focusing 244:15 418:24 folder 247:25 248:1 290:22,24 321:15 325:4 328:10 330:5 331:8 335:25 367:7 375:24 405:18 464:24 481:1 498:23 499:1 510:9 folders 321:17 folks 275:3 305:12 395:2,3 follow 237:17 263:6 274:20 384:9 401:10 449:23 467:21 502:4 518:8 followed 239:11 239:19 246:1,2 377:5 414:6,10 427:4 following 230:10 246:10 285:6 323:6 387:4 461:14 466:3 499:22 533:6 follows 236:7 282:3 459:2 foot 509:23 force 275:20 foregoing 285:4 286:5,14 323:4 324:5,14 533:4 534:5,14
--	--	---	---

forever 388:18 439:9 form 248:21 253:9 353:11 403:24,24 491:19 formal 432:21 formally 409:4 format 253:11 254:9 286:18 291:9 324:18 491:3 534:19 forms 253:11 409:22 forth 258:7 forum 469:7,16 forward 389:20 436:22 440:6 442:21 forwarded 302:2 334:11 505:20,23 found 357:22 383:7 462:21 foundation 238:18 288:20 340:5,19 342:1 369:18 404:3,12 405:4 415:22 430:4 463:12 464:12 486:7 516:23 foundational 412:17 four 275:5 332:9 457:15 462:24 fourth 400:9 foy 330:6 332:15 333:10 336:18,20 336:24 337:6,18 338:7,8,23 339:18 340:1,9 341:6,19 341:21 342:12,14 342:18 344:4,24	352:20 353:6,10 353:20 354:16,19 355:14,25 356:13 356:16 357:14 foy's 340:16 345:3 frame 257:17 316:20 330:11 337:11 495:20 francisco 271:20 277:5 407:24 frequently 368:13 front 291:3 423:23 454:25 full 286:14 324:14 434:21 453:2 534:14 fully 292:14,22 function 251:15 further 257:23 258:1 389:19 392:10 409:18 419:16 438:3 447:18 458:8 462:1 464:24 465:18 517:5 530:15 531:21	generally 297:16 338:14 339:7 356:3 415:19 505:6 506:2 generated 291:5 345:4 351:2 360:9 415:15 generator 424:23 502:13 getting 246:5,18 294:2,17 305:25 307:8 345:2 346:5 375:14 417:8 421:9 453:23 give 256:5 260:9 267:17 306:21 325:7 333:23,25 345:3 361:2 371:11 393:18 422:2 436:21 462:4 471:2,4 502:25 522:19 given 236:16 266:19 271:5 287:24 344:5 366:12 372:17 386:10,13 391:5 393:8,13 403:19 428:19 443:10,21 488:13 495:17 gives 420:11 451:11,17 474:7 512:12 giving 404:17 465:22 glad 306:6,11,25 gleaned 432:10 go 242:14 243:10 243:19 246:14,20 248:4 249:2 251:19 252:6	253:6,14 256:21 261:10 264:9 265:8 266:9 267:12 268:18 273:16 284:6,11 290:19 297:11 307:5,16 308:1,9 308:20 309:3 316:16 317:9 325:14 327:18 328:8,9 329:23,23 329:24 331:2 332:5 335:24 336:9 337:15,16 340:5,21 342:4 346:25 347:13 348:16 349:1,18 351:3 353:15,17 353:24 354:15 359:6 361:5 363:23 364:4 367:5,15 368:23 373:1,25 374:10 375:18 376:9 379:2,12 383:18 384:23 387:23 388:25 389:20 390:8 392:3 399:12 400:3 401:5 402:24 407:1 408:16 411:12 412:12,25 413:10 416:12 421:6 428:10 431:9 436:2,22 439:9 440:6 442:21 443:19 444:7 446:11,24 448:7 451:4,23 455:13 456:12 457:15 464:5
	g		
	g 524:13,14 garbled 319:9 gathering 380:9 gavin 229:7 235:6 278:7 310:7 gears 260:8 general 231:22 234:10,13,14 235:24 247:6,12 253:23 256:18 266:13 281:11,13 281:14 313:12,14 313:15 408:12 484:25		

[go - handling]

474:16 477:1,8,14 478:8,25 479:11 482:15 484:13,24 486:8 487:14,19 488:21 489:24 491:18 492:17 494:11 495:11 502:1 503:11 506:11 508:21 510:8,20 512:20 513:17 515:15 516:25 520:24 524:8 527:12 528:24 531:12 532:7 goes 264:2 273:12 273:20,24 370:22 445:17 453:15 490:15 512:8 going 235:2 237:12,17 241:22 243:1,2 244:9 249:12 258:16 260:9 263:6 273:18,23 274:14 274:20 276:14,19 284:6 290:21 297:9 309:7 315:19 316:24 319:10 320:22 321:10,13 322:3,4 325:3 328:2,14 330:3 333:19 339:9 348:3 353:24 359:11,24 363:3 367:5 368:6 368:6 374:16 380:17 382:19 384:23 386:15 389:14,16,18 390:18 391:13	393:4 395:8 396:14 399:12 401:6 402:21,25 404:11 411:12 417:12 418:25 419:20 421:18 425:6 434:15,21 434:23 444:16 448:7,8 449:23 453:1,17,23 455:6 457:9 458:1 464:22 465:7 466:1 469:20,25 470:3 474:18,20 476:21 477:12,18 478:9 480:25 490:17 494:22 500:11,16,18,18 500:21,24 502:4 503:6,14,19 507:22 509:7,10 509:11,23 510:3 510:21 511:1,6,25 512:1,7,9,10,16 513:5,9,20,21 514:19 518:2,5,9 518:18 519:9,10 521:14 522:24 523:1 526:15,17 526:20 527:16 529:19 532:8 good 235:1 236:10 236:11 245:11 260:23 273:1 305:20 306:16 307:11,18 308:11 402:23 434:20 google 508:16,24 508:25 509:20 510:16,17 511:4	govern 238:25 239:19,22 506:6 governed 240:7 370:1 governing 239:10 240:2,5 370:13 467:14 grant 382:5 383:3 393:4 398:4 422:22 424:3 451:12 463:4 483:9,20 484:9,21 506:16,18 514:24 515:4,7,7 granted 384:18 392:18 393:9 479:20,24 487:15 515:24 529:25 granting 423:21 426:18 488:21 gravely 317:25 318:9 graveyard 351:1 grayed 249:21 great 321:19 453:20 grivakes 233:17 280:19 312:19 ground 396:10 428:18 grounds 386:3 389:6 467:8,12 group 371:22,25 396:24 432:22 469:22 495:17 guess 359:17 478:6 482:18 491:14 guidance 400:19 415:4 487:24 488:4,8,10,13,16	508:2 guideline 426:13 522:9 guidelines 240:8 370:12 481:2,16 481:22 482:3,6 485:1,2 503:17 514:5 515:3 517:16 519:5 524:1 guidotti 395:20 guilty 358:21 gun 297:3 338:2 356:4 474:19 476:17 523:16,23 guns 297:4,7 306:3 361:23 397:19 523:3,9,12,19 524:5,7 guys 385:8 457:22
h			
h 231:1 232:1 234:3 281:3 311:10 313:4 524:8,13,15,22 525:2 half 362:5,6 496:12 halfway 499:21 hand 250:10 252:7 260:16 286:21 324:21 534:21 handguns 428:3 handle 256:8 307:9 532:3 handled 304:21 307:9 367:13,23 411:3,6 handling 348:15 436:11			

handwriting 303:19,21 304:1,4 happen 251:13 252:25 253:4 402:7 415:8 477:11 happened 275:13 283:15 304:18 343:20 happening 343:16 happens 252:23 392:25 happy 306:11,25 hard 251:25 338:4 457:14 harm 317:22,25 317:25 harmed 398:14 hazard 243:2,7 244:5,18 245:14 517:5 head 371:7 headed 379:19 461:2 heading 250:9 hear 246:18 260:21 263:2 319:2 321:11 339:14 431:7,9 444:5 472:8 524:17 531:24 heard 302:11 304:15 338:14 340:8,9 hearing 341:20 364:6 432:21 433:18 434:2,3,5 434:10,11,12 466:6,9,12 471:11 471:15 472:11,23 473:2,21	hearings 432:13 heineck 497:13 held 235:9 help 356:23 herada 472:2,3 hereunder 286:20 324:20 534:20 high 469:24 highway 231:7 264:13 492:8 hill 263:12,15 264:3,21 492:1,6 492:13,23 493:3 494:25 495:9 508:8 509:24 510:4,12,18,22 511:2 hired 299:1 historic 272:25 historical 273:4 304:20 326:24 364:14,18,25 historically 244:10 history 407:21 475:12 hold 261:25 328:21,21 346:5,6 385:8 394:10 477:14 486:5 holster 289:23 338:2,16 340:25 356:5 holstered 289:1,5 honestly 408:14 hoppe 234:19 235:11 281:19 313:21 hosted 235:10 hotel 385:23 386:7 406:10,18 417:21	418:10 hotels 402:16 hour 233:4 276:15 280:5 312:5 402:22 434:16 476:21 477:6 518:6 hourly 309:11 hours 242:2,5 317:18 424:22 477:4,11,19,21,23 478:2,5 household 454:2 howard 234:4 281:4 313:5 hrmrlaw.com 234:8 281:8 313:9 hundred 250:7 258:6 297:18,21 hypothetical 264:7 267:9 415:23 456:9 484:11 486:7	identified 240:16 240:23 297:4 331:22 identify 235:15 240:22 274:9 328:23 330:1 336:4 337:10 347:9,11 514:19 517:17 523:19 525:15 identifying 274:11 347:5 identity 514:22 515:9,12 ii 229:17 235:4 278:15 310:15 515:15,16 516:4 516:10 518:25 illegal 288:18,24 289:8 397:20 399:5,10 404:2,10 405:2 427:11 428:17 445:8 526:10 illness 318:1,4,6,7 image 397:18,20 400:9,24 401:18 404:1,10 405:2 407:2,3,4,5,8 472:16,20,24 473:14,22 474:11 474:17,19 475:20 476:6 508:16 510:16,17 515:17 515:22 516:11,20 517:7,9,17,21 519:2 520:9 521:4 521:18 images 397:24 475:22 476:11 515:17,22 516:1
		i	
		idea 245:9 283:24 352:7,18,23,24 353:2,5 355:16 518:12 522:24 identification 247:22 260:12 265:10 269:21 287:2 298:8 301:8 314:5 345:20 354:2 360:2 365:4 385:3 399:16 405:15 411:21 416:16 435:4 457:12 466:21 470:7 471:21 501:2 507:3	

[images - instruction]

516:11,20 517:17 519:2,11,11 520:9 520:13 521:4,11 521:22 522:10,11 immediate 333:20 343:12 immediately 408:6 461:14 impact 363:25 364:12 370:19 456:15 485:21 486:3,12,16,18,20 522:7 impacting 455:25 456:7 important 238:19 473:11 476:14 impose 490:2,8 impossible 486:17 impression 451:17 inappropriate 469:8 inch 407:11 incident 231:18 289:4,22,23 297:14,20,24 332:17,20,21 336:4 342:15,19 342:21 343:10 344:9,13 345:11 346:16,17,19 347:7,12,15,18,18 348:8,11,15 349:3 349:10,11,15 350:7,15,20,20,21 350:24 351:9,13 351:16,23 352:2,9 359:2 incidents 349:9 351:3	include 355:14 406:2,4 407:8 472:15 475:19 476:17 485:2 508:10 included 277:8 406:6,18 508:13 including 240:7 365:13 406:13 469:23 513:25 incomplete 264:7 267:9 375:13 376:10 414:1 415:23 423:16,18 437:11,23 443:5 447:23 484:11 486:6 530:9,10,19 incorrect 458:10 increases 245:3 indefinite 257:9 388:2,3,14,16,20 389:1 439:9,15 indefinitely 242:15 independent 383:9 432:4 433:14 indicate 292:24 354:19,25 491:11 indicated 292:19 294:5 326:14 422:24 493:12,23 509:1 indicates 516:2 520:15 indicating 294:8 indication 513:3,8 513:14 individual 236:22 331:16 individuals 274:9 288:5 470:14	514:22 info 349:3,7,10,11 informal 341:9 433:18 434:3,11 information 256:22 257:13,16 257:21,23 258:1,5 258:13,23,24 259:1,5,9 262:14 262:19 268:1 269:9,11 271:4,8,9 271:12 272:13,21 272:24 273:1,1,7 273:24 282:10 287:24 294:3 295:24 296:3,4,7 330:12 334:16 349:8,12,13 362:21 375:2,14 375:17,19 376:6 376:16,18,20,21 377:2,8,23,25 378:4,7,11 379:7 379:13,16,24 380:10,11,16,17 380:19 381:8 382:12,16 383:1 383:10 384:12,15 386:10,22,24 387:9 389:7,15,19 391:4 392:11,11 392:15,22,24 393:2,6,7,10,14,17 409:19,24 412:17 412:21 414:7,11 416:3,7 419:15,17 419:24 421:9,12 422:21,24 423:17 423:18,19 424:2 424:10,12,16 432:9 433:19,22	440:5,9 442:19 443:4,8,12 445:3 445:18 452:23 470:20 476:1,4,14 477:1 478:22 505:16 506:13 511:22 512:13 514:17 531:3,7 informational 352:6 475:16 initial 252:21,24 373:7 381:15 384:17 388:2 408:21 418:19 419:11 431:3 459:21 460:25 461:3 483:9 initially 289:21 injured 246:6 401:18 input 251:1 331:18 345:3,8 356:18 371:11 403:13 425:16,18 461:18 inside 287:10 instance 241:21 303:13 358:2 instances 490:2 institutions 317:18 instruct 237:15 263:1 273:18,23 274:15,16 instructed 230:9 273:17 334:10 436:14 instructing 263:3 274:17 302:16 instruction 237:18 263:7 274:21 449:24
--	--	--	---

instructor 341:11 insufficient 413:16 421:20 422:12 504:5,9 insurance 243:4 499:24 intend 386:2 389:5 515:17 516:12 intended 259:9 292:24 386:8 387:1,2 389:13 391:22 394:6 398:12 407:10 476:1 509:2 513:15 515:23 519:2 intending 389:8 392:17 intends 397:18 517:18 523:20 525:16 526:9 intention 292:19 386:19 390:4 475:18 interactions 363:24 interfere 468:17 interference 245:6 246:19 318:19 319:5 330:14 internal 315:14 316:5 interpret 357:4,5 interpretation 334:7 380:5 404:14 498:12 502:6 interpretations 357:2 interrogatories 231:6 260:18	interrogatory 261:12,13 264:22 265:5 493:16,19 interruption 249:8 intimated 337:1 introduce 416:12 417:12 448:8 457:9 490:17 500:21,24 introduced 298:6 435:6 inundated 302:25 303:5,8,9 306:24 307:1,12,22 308:6 308:15 inundation 305:19 invades 273:13 invasion 273:12 investigating 357:16 invitation 441:4 448:5 480:14 invited 454:19 455:23 456:12 457:2,8 inviting 441:16 involved 243:3 327:23 344:24 345:1 347:6,10,15 366:7 370:9 372:14 384:4,5 408:4 410:11,15 410:19 432:8 449:11 452:2 463:25 464:2 involves 434:1,10 involving 437:19 irrelevant 307:25 358:3 359:4 521:23	issuance 499:25 issue 242:16 251:17,21,23 261:21 274:15 316:18 337:2 388:1 389:2 390:9 423:9 430:15 456:1 463:8,17,23 473:6 482:20 484:16 485:5,9,14 493:4,24 issued 266:6 384:22 415:2 425:22 443:24 444:3,13 445:1 446:18 464:5,16 491:11,12,16 495:5 496:10 issues 241:23 244:12,25 245:2 251:3 253:24 304:16 316:19 366:11 390:10 394:23 420:24 421:1 423:10,12 423:13,14 440:19 442:19 448:6 450:14,14 452:2 452:14,14 453:17 479:17,19,22,23 480:16 498:12 issuing 464:1 481:23 482:3 item 242:22 512:1 items 232:8 238:2 442:19 478:25 507:22 512:3,4 ivan 483:16	j j 400:18,25 jaime 298:15,17 298:17,24 299:2 january 231:11 jcs 229:6 235:8 278:6 310:6 jelena 472:2,3 jeremy 354:16 jimmy 418:9 job 305:25 john 234:12 235:23 281:12 313:13 359:17,18 john.killeen 234:16 281:16 313:17 johnson 255:8 johnson's 255:10 jonsen 395:23 435:25 judicial 432:21 433:18 july 367:17 368:20 391:5,21 393:7 400:1,2 401:21 421:19 june 315:12,22 330:11,15 342:13 342:15,19 343:10 345:4 350:7,11 352:17 461:25 465:8 jurisdiction 263:15 266:21 493:4,9,23 494:3,7 494:8,16 jurisdictional 263:21 justice 266:17 267:15,20,23
--	--	---	---

268:8,13 428:23 429:8 470:14,23	257:15,22,25 258:6 259:19,21 259:23 260:7 266:13 275:3,4 283:3,9,15 288:25 289:10,19 293:1 295:21,23 296:10 296:22 297:12,17 297:19,23 298:2 300:16 303:21 306:21 307:6 308:2,10 309:15 314:2 318:13,15 319:22 320:8 321:5 327:7,8,8,20 334:21 338:13 339:7 342:9 345:7 345:9,18 351:11 351:12,12 352:16 352:21 353:23 354:4 355:11,25 356:3 357:17 358:7 359:24 366:23 367:21,24 370:21 373:2,22 377:12,17,21 378:2,5 381:17,17 381:24 382:2,7,7 385:5 387:16 390:18 391:1,2 393:3,16 398:9,15 401:21,25 405:6 407:13,19 408:3 408:17,21,23,24 409:3,6,7,11,17 410:4,7,20,25 411:7 413:1,4 414:4,6,9,19 415:3 415:12,14 416:13 417:15 418:22 420:3,18 422:4	425:20,24 426:2 427:25 428:12 429:14,18 430:7 430:10,11 435:7 440:20 447:25 448:5 449:10 450:18,19,22 452:11,21,24 459:25 461:15,17 461:22 463:14 466:24 470:9,25 476:15 480:9,10 486:19 491:9,15 495:17,19 501:4 502:4 512:14,18 518:10 519:8 521:13,17 knowing 352:1 knowledge 258:3 258:14 262:13 282:22 292:19,24 319:24,25 320:2 326:9,24 352:8 357:15 358:5,8,10 358:12 361:11 363:25 364:10,15 364:18 366:5 377:10 381:5 484:15 524:4 knows 238:16	516:22 land 388:4 language 440:16 large 270:15 276:11 450:15 510:17 largest 394:25 late 522:13 launching 365:22 law 264:11 271:4 271:9,10 272:12 272:21,25 273:7 273:25 287:20 288:5 294:14 357:7 358:16 395:2 400:18 403:7 406:15 428:25 430:19 467:21 498:13 527:8 528:2 laws 246:1,2,10 263:11 327:24 357:2,5,6 370:18 370:19 427:3,6 428:2 463:2 483:4 485:3 489:19,22 496:17 lawyer 358:19 lay 238:17 layer 244:16 433:10 layers 244:15,16 431:17,20 leading 459:22 leads 425:15 leave 482:12 leaving 359:17 482:20 left 238:22 250:10 252:7 346:25 350:2 434:19
k			
karen 395:20 kaufman 256:15 256:19 270:4,6 284:3 298:15,19 298:20 299:3,4,9 299:11,13,20,21 299:25 300:8 302:1 304:10 325:16 326:3,14 329:11,19 345:10 345:14 354:22,25 355:4,7,9,13 366:16 kaufman's 283:11 283:20 keep 273:1,4 291:23 417:9 keeping 355:17 kept 291:19 292:3 killeen 234:12 235:23,23 281:12 313:13 359:19 kind 241:17,19 251:22 294:6,8 302:15 318:18 333:18 361:19 489:12 498:2 504:17 510:7 517:24 519:11 521:10,18,20,21 521:22 522:6 knew 295:23 297:13 341:12 know 243:25 244:10 245:12 247:2 252:1,25 254:2,8,11,13,20 254:23 256:13			
	l		
	lacey 298:15 299:21 lack 326:4 391:10 420:12 lacks 288:20 340:5 340:19 341:25 369:18 404:3,12 405:4 415:22 430:4 463:12 464:12 486:7		

[left - lombardo]

476:23 518:11,14 531:14 legal 234:20 257:24 259:12,12 261:21 262:11 263:17 264:8 267:9 273:25 281:20 313:22 358:19 359:5 372:16,17,18 398:5,8,19 403:13 403:18 422:18,18 428:8,21 430:4 443:16 451:13,16 451:18,21,25 464:13 506:9,17 legislation 361:22 legislative 327:2 327:10,14 legitimate 427:14 429:20 length 242:6 424:22 letter 231:11 232:16 383:19 393:12 406:24 409:12,15,17,19 414:23 415:9,11 415:12,13,14,15 418:11,14,15,18 418:22,24 419:4,6 419:10,12,13,20 420:11,17,25 421:11,23 422:25 423:7,11,17,23 425:8,12 426:4 428:12 429:21 430:21 438:20 440:21 442:13,14 444:10,20,23 445:4,7 448:13,14	449:8 454:24 458:5 459:10 460:7 461:7,13,14 461:19,24,25 462:8 463:21 465:8,11 466:3 467:4,5 479:14 letters 418:25 419:2 440:25 442:18 443:3,20 444:9 445:21 446:18 level 303:15 364:7 431:25 432:1,14 432:19 433:5,23 434:1 486:15,18 levels 239:5 license 482:20 lighting 424:18,24 468:23 469:2 lights 519:9 522:5 likelihood 399:5 limit 242:18 247:10,17 477:6 limitations 241:16 limited 309:5 388:8 433:14 456:14 limits 242:6,9,11 265:6 369:14 493:14 494:12,16 494:19 line 230:11 246:19 285:9 319:5 323:9 395:16 404:18 408:4 418:3,8 533:9 lines 480:20 list 243:21 246:12 246:23 368:11 494:24 496:5,8,14	513:20,21 514:3,8 514:14 523:2 listed 241:11 243:6 254:16 352:2 366:6 407:11 484:19 487:12 488:19 489:17,23 496:18 508:1 529:4 listen 337:3 listened 321:22 329:20 332:8 333:13 336:12 338:14 341:21 498:17 listening 328:16 340:15 listing 523:8 lists 467:8 litigation 273:21 little 236:13 260:8 276:15 304:25 326:23 407:20 438:3 479:25 live 266:20 267:16 524:9,23 525:5,17 525:19,21,25 526:1,9,16 527:22 527:23,25 528:10 529:9 lived 299:22 lives 329:16 living 485:22 llp 233:17 234:4 280:19 281:4 312:19 313:5 load 269:15 292:16 411:16 527:4 loaded 267:18 292:14,22 525:19	526:10,13,21,22 527:6,20,23 528:4 loading 248:3 265:16 292:20 loads 466:24 470:9 loan 266:19 267:16 268:10 local 246:2 370:18 427:5 463:3 468:8 483:5 489:20,22 496:16 location 243:23 244:13,14 332:22 389:8,15,22 390:12,15,22 391:5,10,11,14 392:17,20,21 393:4 423:20 424:18,19,23 425:6 439:20 440:14,19 444:21 444:24,24,25 445:4,11,15 450:12 469:16 486:25 500:5 510:20 511:14 locations 440:18 lock 340:25 locked 351:21,24 352:3 logical 355:8 421:3 427:14 428:6,15 429:11 429:17,25 430:14 443:22 444:11 461:12,12 465:20 465:24 519:7 logically 445:2 446:16 479:19 lombardo 229:19 233:5 235:13
---	--	--	--

[lombardo - manager]

278:18 280:6 286:4,24 310:18 312:5 324:4,24 534:4,24 long 237:11 245:25 247:17 276:3 329:1 341:5 348:18 361:23 388:16,24 403:6 456:24 468:18 longer 270:6 300:22 385:9 428:2 look 242:1 251:14 270:13 367:5 373:1 375:23 376:17 397:16 405:17 421:14 432:7 433:19 442:9 458:22 465:7 468:21 481:15 485:23 492:3 494:22 498:19 499:16 503:2 512:20 517:13 529:17 530:24 looked 243:5 252:18 334:3 401:22 403:23 408:19 416:2 417:7 419:21 427:8 458:18 462:25 493:15 496:7 508:7 509:18 517:7 looking 241:9,11 249:19 259:11 270:25 271:18 272:15 284:4 333:6 335:7	347:22 353:8 360:16 365:1,15 365:17 388:13 394:21 402:10 403:21 408:17 422:9 432:22 438:25 455:23 482:21 489:18 510:14 511:15 522:2 531:16 looks 249:3 250:8 253:17 265:13 270:14 287:24 328:23,25 347:2 348:4 367:15 368:9 385:6 407:1 411:18 471:18 472:1 loosely 316:5 317:11 los 233:19 280:21 295:15,19,25 312:21 lot 241:22 275:8 371:14 400:19 434:22 519:10 lots 238:13 lunch 328:4 m m 229:19 233:5 278:18 280:5 286:4,24 310:18 312:5 324:4,24 330:19 534:4,24 magazine 528:3 magazines 292:15 292:22 527:4 mail 231:13,15 232:3,4,6,10,11,13 232:14,18,19,21 232:22 296:8	298:14,14 299:20 301:16,17,22 302:1 304:9 311:12 314:20,21 315:1,3,12,22 316:5,12 317:3 334:20,21 335:2,2 365:12,15 366:6 373:18,20,20,22 375:21 378:1 380:3,8,15,20 381:1 382:4,21 383:8 385:16,17 385:19,25 386:6 386:20 392:16 393:1,12,19,25 394:4,6,21 395:15 395:18 396:1,5,7 396:15,23 399:25 400:10,24 401:22 403:22 404:8,9,17 405:10 408:24 409:17 411:4 412:2,3,5,9,13,16 414:13 416:10,22 417:7,20,23 418:4 418:15 419:21,22 420:1,3,7,23 421:18 422:6,22 435:23,23 436:2 436:14 437:4,4,8 437:22 438:20 440:21,24 445:20 457:14 458:15,22 459:9 460:16 470:12,13 471:25 472:1,5 496:25 497:6 501:18 502:1 507:9,12 509:1,6,8 511:23 519:1 530:25	mailed 255:4 334:4 mailing 452:20 497:9 mails 260:3 298:13 363:22 364:23 365:13,18 365:19,22 381:7 397:12 412:10 413:5 418:22 419:20 422:10 435:20 441:12,18 501:6,9 530:13 main 453:17 maintain 272:12 272:20 274:6 275:1 363:7,11 maintains 362:21 maintenance 231:7 major 244:8 486:23 maker 383:5 making 293:3 329:15 334:9 370:9 422:6 449:11 451:7 455:16 mall 316:21 man 297:3 426:9 426:15 management 300:15 325:20 manager 431:24 433:24 462:2,15 463:4,15,18,20,22 463:25 464:1,4,6,7 464:14 465:22 466:3 479:15,16 490:16
---	---	---	---

[manager's - matter]

manager's 269:4 442:16 471:8,12 473:2 managers's 364:7 managing 305:18 mandatory 247:16 manner 241:9,14 245:20,20,22,25 246:3,8,23,25 247:3 317:12 379:15 388:12 414:15,20 415:5 426:21,22 427:1 438:6,10,17 440:14,19 441:17 441:21 443:13 446:7,14 447:18 448:2,4 450:10 485:17 506:14 529:6,7 manning 314:24 map 375:9 437:13 437:16,18 492:11 508:24,25 510:7 511:4 512:4,12 maps 508:16 509:20 510:16 marching 276:13 mark 247:20 260:9 265:8 266:4 268:18 282:19 284:6 290:19 301:5 314:17 322:5 353:24 363:3,3 384:23 399:12 411:12 448:7 464:22 466:1 469:25 470:3 marked 238:3 247:21 248:5	249:2 253:6 260:11,14 265:9 269:20,23,25 277:12 287:1,4 290:20,21,24 291:1 298:7 301:7 309:18 314:2,4,9 321:6 325:2,4,10 345:19 354:1,7,16 360:1,4 365:3,6,18 367:6,10 368:7,9 373:6,8 375:24 385:2,6,11 395:9 399:15,18 405:14 405:18 411:20 416:15,20 417:13 417:14 435:3,9,13 435:17 446:25 448:8 457:11,19 457:25 464:23 465:4 466:20,23 470:6 471:18,20 478:17 481:1,3,17 490:18 494:23 496:21 498:20 501:1 506:25 507:2 markevitch 233:16 235:19,19 280:18 312:18 532:5 marking 301:6 345:15 416:13 martin 234:4 281:4 313:5 master 234:3 235:21,21 237:8 237:12,21 238:14 239:12 240:25 243:8,17 246:17 248:1 250:17	258:16 261:25 262:20 263:4,17 264:6 266:7,19 267:7,16 268:10 271:14 272:1 273:11,18 274:7 274:17 276:14,18 281:3 282:7 284:9 288:19 297:9 305:21 306:9 307:3,14,23 308:8 308:17 309:1,12 309:15 313:4 314:11,15 315:25 316:14 317:6 322:6 327:16 328:21 332:3 336:2 337:7 338:10,25 339:19 340:3,19 341:25 343:1 345:21 346:4,9 358:18 359:4 364:2 365:15 369:17 370:4 372:2 374:14 376:1 378:13,24 379:10 382:9 385:8 387:21 388:10 389:24 390:7,24 391:8,24 392:5 394:10 401:3 402:21 404:3,11 405:3 410:2 411:14 412:23 413:17 414:2 415:21 416:6 424:4 428:7 430:3 434:18 443:14 444:4 446:9 447:2 447:7,11 448:22	449:19 451:2,20 455:11 457:18 463:11 464:11 466:16 467:15 474:14 476:8,21 477:10 478:6 484:10,22 486:5 487:17 491:14 492:15 494:9 496:11,23 498:21 498:24 499:2 501:16 503:8 505:2 506:8 510:10 516:22 518:5,9,15 520:22 522:12 524:13,20 525:1 526:3 527:10 528:22 530:2 531:10,23 531:25 532:10,12 mateo 234:6 264:14 281:6 313:7 materials 239:25 240:7 272:8 274:4 406:2,4,6 407:9 433:15 matt 250:6,8 251:19 254:21 256:14 257:22 376:22 378:17 380:16,18 384:3 384:10 410:8 419:5 435:24 442:15 449:16 459:10,22 460:2 461:2,13 matter 235:5 243:25 287:17 309:6 358:15 390:16 429:24
---	---	--	---

[matters - michael]

<p>matters 251:16,17 403:13,18</p> <p>matthew 253:18 314:22</p> <p>mazon 418:9,10</p> <p>mcclure 395:22 396:9 412:13,16 412:21 414:6 419:14,23 426:8 427:10 458:23 460:7 461:7</p> <p>mcclure's 413:12 430:20</p> <p>mcintyre 462:2,16 465:19 467:8</p> <p>mcintyre's 467:5</p> <p>mckee 268:3</p> <p>mean 296:19 307:24 317:4 348:17 349:7 380:7,25 401:13 421:8 456:11 462:19 487:9 521:1,3 530:2</p> <p>meaning 255:6 320:5 331:10 389:5 396:25 440:12 447:17</p> <p>means 283:19 309:9 339:12 348:18 380:11,14 404:13 486:19</p> <p>meant 283:24 302:21 316:12 401:11,12 404:8 429:14 430:11</p> <p>mechanisms 381:4</p> <p>media 235:4 294:5 294:17 426:9,14</p> <p>median 262:12 263:11,15,25</p>	<p>264:3,20 265:4 266:2 267:5</p> <p>439:23 445:8 469:23 493:6,10 494:1,4,7,19 495:13,18</p> <p>medians 469:6</p> <p>meet 237:5,7 381:4 442:2,25</p> <p>meeting 237:20 321:4,7 325:5,20 325:23 326:1,17 326:22 327:3 376:23 377:11,13 377:18,22 378:3,7 378:10,18 379:8 379:19,24 380:1,4 380:7,13,14,15,25 382:1 395:10 402:2,6,9,13,19 405:22 406:10,17 406:20 407:9,16 408:13 409:25 415:19 416:5,10 417:24 420:13 434:13</p> <p>meetings 300:15 300:21 381:20 382:4 409:22 410:22,25 411:3,5 411:9</p> <p>meets 286:18 324:18 380:22 534:18</p> <p>member 288:2 453:20</p> <p>members 395:7 455:25 456:8,24 513:4</p> <p>memo 287:17</p>	<p>memorandum 287:9,15</p> <p>menlo 231:3,8,11 231:17,20,22 232:7 234:1 235:22 236:23 244:3 257:15 263:10,10,20 264:4,12,19 265:6 267:6 270:7 271:5 272:10 274:23 275:1,14,22 276:1 276:5,9 281:1 283:15,17 287:10 287:13,21 288:3 288:10 289:8,12 291:6,8,10,23 293:7 298:24 299:10,13 300:12 301:24 305:2 313:1 317:15 318:24 319:18 320:9,10,19 321:15 325:21 326:9,18 327:9,13 330:4,7,13 341:19 345:16 356:20 358:6,9,13 360:9 361:8,13,20 362:2 362:20 363:6 364:11 365:24 366:1 367:13 368:1 377:22 379:23 380:6,24 381:25 384:14 386:7,19,25 395:4 407:21,23 413:25 414:10,19 415:3 421:21 422:1,15 424:1,14,17 426:14 429:24</p>	<p>443:11 445:10 447:16 453:10 458:5 462:14,19 463:10,24 464:10 464:20 467:13 482:3,14,23 485:1 489:4,10 491:4,20 493:13 494:13,14 494:17,20 495:6,9 497:10 508:2 509:15 510:20 511:13 514:13 519:5 524:4 525:7 525:11 527:7 528:9,14,20 529:5 529:12,25</p> <p>mental 318:1,3,6,7</p> <p>mentioned 241:14 245:19 246:9 259:15 274:13 283:5 292:8 315:3 328:16 340:13 441:12 481:16 485:24 487:2 524:14</p> <p>mentions 524:22</p> <p>message 283:11,20</p> <p>messages 231:9 269:24 270:3 284:4</p> <p>met 320:14,16 340:12 390:13</p> <p>method 380:20</p> <p>michael 229:4 234:22 235:6,18 235:20 236:1 254:14 270:18 278:4 281:22 299:14 304:11,16 306:7 307:1,12,22 308:7,16 310:4</p>
--	--	---	---

313:24 327:10 357:10 373:23 374:4 393:20 395:17 412:14 milde 250:8 251:19 254:21 256:14,19 257:22 258:2,4,14,24 259:4,10,11 376:11,22 377:10 377:15,18 378:10 378:17 379:8 380:12,16,18 383:21,22 384:3 384:10 409:2 410:8 419:5 425:9 425:12,15,18 435:14,24 436:7 436:15 442:15 449:16 450:19,23 459:11,14,22 460:2,13 461:2,13 461:18,24,25 465:21 milde's 250:6 mind 404:7,9 473:7 mine 303:22 385:8 387:15 minimum 286:18 324:18 534:18 minors 472:24 minute 249:9 276:15 328:24 329:5,13,13 339:20 359:10 402:22 434:17 518:16 529:17 minutes 325:5,20 329:1 332:2,4,8,9 336:9 337:13	361:3 402:24 476:22,25 477:4 518:13 misconstrued 478:3 miserable 329:16 missing 374:24 375:2 443:5 499:20 530:19,22 531:3,7 misstates 309:1 338:25 378:13 379:11 390:7 401:3 528:22 misstating 401:7 mistake 465:22 mitigation 243:3 245:2 251:23 252:3 382:23 mobile 275:19 model 502:12 modifications 449:4 modified 382:23 moment 392:9 monitor 235:3 monitoring 275:23 month 237:4 months 275:8 326:23 327:22 morning 235:1 236:10,11 241:21 350:24,25 352:13 352:20,21 470:19 470:24 471:6 mother 296:5 motion 266:22 271:15 273:25 motorists 517:10 517:11 522:1,22	move 290:21 315:20 316:25 325:3 358:20 386:16 394:10,12 395:8 movement 519:10 522:4 movie 486:24 mp 231:4,4,8,8,9 231:10,12,12,14 231:14,15,15,18 231:19,21,21,23 231:23 232:3,3,5,5 232:6,6,9,10,13,13 232:15,15,16,17 232:18,18,20,20 232:21,21 248:10 248:10 249:19 253:6,14 254:16 265:14,14,21,22 265:22 269:25 270:1 277:3 287:5 287:5 298:11 301:10 325:9,10 325:15 345:17 354:7,7,16 355:17 360:5,6 365:7 368:23 373:14,15 373:25 375:7 385:12 395:12 399:19,19 405:19 408:17 411:24,24 412:12 417:17,18 435:17,18 444:18 457:16,16 465:2,2 466:23,24 470:4,5 471:19,19 481:19 490:22,23,25 491:19 492:4 495:2 497:2 499:8 501:7,7,13 507:1	523:1 mp1426 232:23 multiple 248:6 260:14 265:13 287:5 290:8 325:9 354:6 360:5 365:7 373:14 399:19 405:19 411:23 419:10 470:4 507:1 municipality 468:9 mute 236:1 mutual 275:17 438:5 myriad 306:22
			n
			n 230:1 279:1 311:1 name 235:11 267:25 268:3,5 274:9 290:24 325:4 367:7 373:7 374:4 395:10 423:5 444:16 448:10 464:24 478:16 481:2 490:19 496:21 named 286:6 324:6 534:6 names 513:23 514:4,8,14 naturally 517:25 nature 239:6 274:12 305:15 451:15 487:11 nea 232:12 294:12 294:18,20,22,25 295:4,10,13,18 296:10 302:11 303:23 304:16

[nea - objection]

<p>305:1 320:6,14,18 321:7 385:20 386:6 394:24 402:12 406:10,18 416:20,23 417:13 417:20 418:6 423:5 nea's 408:12 near 261:2 303:25 304:2 485:22 511:25 necessarily 238:17 251:7 300:14 350:4 380:3 440:3 441:13 456:11 necessary 243:4 424:21 524:10,24 525:6 need 243:2 252:2,3 253:3 314:11 369:21 390:18 398:10,15 439:7 441:8 462:4 477:25 496:9 503:19 504:1 518:16 521:13 530:23 531:3 532:4 needed 256:22 275:10,20 331:17 372:16,17 376:7 376:16,18,20,21 379:7,14,24 380:11,16 393:3 414:25 415:18 416:3 427:4 440:6 440:9 442:19 444:2 476:2,5 480:17 505:25 needs 488:10</p>	<p>negative 305:17 338:9 518:2 neighborhoods 453:21 neither 530:8 never 261:20 288:24 289:11 290:2 302:11 304:15 364:5 366:22 470:25 524:6 new 304:15 309:12 365:23 366:2,8,20 366:23 368:8 400:18 445:3 448:19 449:3,7,12 458:20 459:8 460:16,17 466:1 500:21 522:17,18 newest 412:5 newsom 229:7 278:7 310:7 newsome 235:6 nexus 427:14 428:6,16 429:11 429:17,25 430:14 nick 471:16 478:20 night 468:24 469:2 noise 239:5 241:22 247:2 487:9,10 non 277:14 309:20 nonresponsive 315:20 316:25 386:17 nonsense 522:14 normal 292:4 316:4,9,13,17,22 317:5,12 431:4 normally 288:1 304:19 315:18</p>	<p>327:22 371:20 411:3 445:15 northern 229:2 235:7 278:2 310:2 nos 484:1 note 235:25 303:23 389:4 notes 331:2,16 529:17 notice 233:3 280:3 312:3 452:19,20 460:9 502:20,23 notified 289:19 396:23 notify 396:25 397:4,9 number 248:9 276:11 309:5 320:4 330:24,25 331:1,3,4,9,13,20 336:5 346:21 347:16 410:17,20 411:17 435:8 462:5 500:22 507:15 517:3,3 numbered 298:11 numbers 265:19 271:17 274:10 325:7 347:5,6,17 347:19,21,23,25 348:1,1 465:1 523:3,9,12,19 524:5 numerous 292:14 307:18 316:20 381:6 403:15,16 406:13 421:11 427:5 443:17</p>	<p>o o 332:15,16 o'clock 241:21 350:6 352:13 o'farrell 234:5 281:5 313:6 o0o 229:3 233:11 278:3 280:12 310:3 312:12 oath 236:19 277:1 obey 488:10 object 237:12 240:25 258:16 267:7 296:18 297:9 315:19 316:24 327:16 328:22 386:15 404:11 430:3 443:14 463:11 487:17 516:22 objection 238:15 239:12 243:17 250:17 263:17 264:6 266:7 273:11 274:8 288:19 305:21 306:9 307:3,14,23 308:17 309:1 315:25 316:14 317:6 338:10,25 339:19 340:19 341:25 364:2 369:17 370:4 372:2 378:13,24 379:10 387:21 388:10 391:8,24 401:3 404:3 405:3 412:23 413:17 414:2 415:21 424:4 428:7 444:4 446:9 449:19</p>
--	--	--	--

[objection - openly]

451:2 455:11 464:11 474:14 486:5 492:15 494:9 496:11 503:8 505:2 506:8 520:22 527:10 528:22 531:10 objections 308:8 416:6 objective 335:7 504:11 obscene 472:24 observation 291:16 355:12 observed 264:22 289:25 355:19 obtain 363:17 439:3 obtained 271:10 416:4,8,8 obvious 401:12 obviously 251:15 306:1 356:4 456:8 occasions 290:8,12 occur 244:7 246:3 388:16 390:19 occurred 290:5,8 298:22 321:4 408:5 433:7 441:11 514:12 occurring 275:25 occurs 410:1 october 325:23 offer 478:1 479:9 office 234:14 257:24 258:10,15 258:22 259:8,16 260:4 261:24 262:1,22 264:14 272:1,18 281:14 289:1 313:15	333:8,12 334:4,12 334:13 342:23 343:5,6 344:1,5,10 344:14,16,22,23 356:7,18 357:8 360:15 362:19 372:12,13,21 373:3 381:9 383:6 383:12 384:2 386:11,23,25 387:13 392:23 393:11 394:9,15 395:5,6 396:21 397:13 398:6,7,19 398:22 400:22 403:23 407:6 409:18 410:18 414:24 415:10,16 418:16,23 419:18 420:19 421:13 422:19 428:24 429:9,9 436:20,24 442:17 449:3,11 449:14 451:11,24 452:1,4,9 458:19 471:17 481:10 505:20,24 506:2 506:12 530:14 531:1 office's 506:7 officer 270:11 316:8 318:15 331:10,12,15,15 331:22 332:15 333:10,14 336:18 336:20,24 337:6 337:18 338:7,8,23 339:18 340:1,9,16 341:5,10,13,18,21 342:12,14,18 344:3,4,8,20,24	345:3 347:14,16 348:8,11,14 352:20 353:6,9,14 353:16,19 354:19 355:10,14,25 356:13,16,16,20 357:14,17 527:8 officer's 331:11 officers 263:10,22 275:18,22 289:12 289:20,24 290:4,7 290:11,18 291:13 291:17 296:17,21 296:24 298:4 315:15 330:17 331:1 335:12,22 347:3,6,9,11,22 349:12 353:15 357:4 398:18 offices 382:22 official 249:20 273:24 282:9 408:18 oh 298:20 okay 238:20 240:2 241:6 245:19 253:8,16 255:16 256:10 261:4 265:23 274:17 306:16 314:14 321:21 328:18 329:4 330:11 331:6 337:22 341:5 346:1,7 347:9,13 349:20 360:4 364:10 368:24 373:11,13 373:25 375:1,5,25 378:2 381:24 385:11 387:4 390:4 395:11	400:7 405:20 411:19 418:24 419:13 421:17 423:6 429:16 431:12 436:2 437:12 440:8 444:19 447:11,12 447:24 448:7,11 448:23,25 457:1 460:6 461:24 464:22 465:3,10 468:19 469:12 477:5,16 478:8 488:24 489:2 490:21 495:1,14 498:24 501:5 509:1,6 513:19 518:17 520:8 522:20,20 525:21 526:12 528:6 531:20 532:2,6 once 237:10 296:21 ones 238:12 240:18 321:20 411:15 ongoing 388:3 438:5 open 287:16,19,22 288:4,9,15 290:23 291:3 315:16 327:14 328:11 330:3 337:2,20 361:23 368:6 385:9 395:16 396:1 408:4 427:11 450:13 456:2 498:13 opened 513:18 openly 264:23 288:6,11,14
---	---	--	--

<p>292:14 361:12 397:19 428:3 429:4,6 operations 304:6 opinion 244:19 305:10 315:11,17 315:23 316:7,22 317:12 334:6 344:16 357:7,9 358:4 359:8 366:15 388:1,17 399:4 400:22,23 403:24 404:18,22 404:22 405:1 422:14,17,18 476:2 opinions 366:10 403:19 opposed 439:8,23 456:16 order 271:16 282:9,11,12,17 301:5 302:15,16 317:21 353:11 399:13 411:13 430:2 440:6 442:2 442:20 444:2 457:3 464:23 470:1 475:8 ordinance 432:25 487:9 ordinances 238:25 239:2,4,10,18,21 240:2,4 433:3 ordinarily 425:13 ordinary 250:16 251:6 252:17,19 291:19 299:18 356:19 376:12 377:1 378:6,21 379:5 415:17</p>	<p>425:11 431:1 433:12 459:13 483:7 organizations 303:1 original 257:6 371:12 394:23 419:1 425:3 432:5 originally 351:5 383:14 405:9 423:1 433:16 442:15 450:10 ortega 253:18 314:23 outline 375:6 outside 262:3 275:24 294:15 395:4 426:20,23 462:13,18 463:1,5 463:9,23 464:9,19 528:18 overall 256:3 overbroad 241:1 243:9,18 250:18 264:7 267:8 297:10 305:22 306:10 307:15 308:18 327:17 342:2 364:3 369:18 370:5 379:1,11 390:25 391:9 410:3 413:18 428:8 430:6 446:10 451:3,21 455:12 463:12 464:12 467:16 474:15 484:11 486:6 487:18 492:16 506:9 520:23</p>	<p>overlaid 511:5 overtime 309:9 overturn 432:11 463:17 464:2,15 464:18 473:18 ownership 262:12 266:2</p> <p>p</p> <p>p 330:19 p.m. 350:6 352:17 532:14 page 230:2,11 231:2 232:2 248:6 248:9,9,20 249:2 249:19,21 253:6 253:15 260:14,15 261:1,10,11,11 265:13 270:13 277:4,11,11,15 279:2 284:15 285:9 286:17 287:5 309:17,21 311:2,11 314:22 322:13 323:9 324:17 325:7,16 347:1 349:18 354:15 355:17 365:7 367:16 373:25 375:7 385:12 399:19 405:19 407:1 408:16,17 412:12 413:10 416:19 435:12 444:18 453:1 458:4 465:5 467:9,10 468:21 470:4 471:19 472:16 481:19 490:23 491:10,18 492:4 497:2,6 499:17 501:13,21</p>	<p>507:1 509:9 510:14,21 525:1 533:9 534:17 pages 229:9,12,17 248:25 269:24 278:15 298:10 301:10 310:15 314:10 325:9 354:7 360:5 365:7 373:14 411:24 457:16 palo 407:22 paragraph 261:16 262:10,14 369:5 385:25 389:4 393:19 395:25 396:7 397:3,17 400:3,9,17 421:11 423:10,15 424:13 426:3,4,6 427:9 430:20 437:8 438:3 447:21 453:2 462:7 paragraphs 355:18 423:14 parameters 257:7 438:6,17,23 439:4 439:12,17 441:5 441:21 443:13 446:8 parentheses 387:4 park 231:3,8,11 231:17,20,22 232:7 233:18 234:1 235:22 236:23 244:4 257:16 263:10,10 263:20 264:4,12 264:19 265:6 267:6 270:7 271:5 272:10 274:24</p>
---	--	--	--

[park - permit]

275:1,14,22 276:1 276:5,10 280:20 281:2 283:15,17 287:10,13,21 288:4,10 289:8,12 291:6,8,10,23 293:7 298:24 299:10,14 300:12 301:24 305:3 312:20 313:2 317:15 318:24 319:19 320:10,10 320:19 321:15 325:21 326:9,18 327:9,13 330:4,8 330:13 341:19 345:16 356:20 358:6,9,13 360:9 361:8,13,20 362:2 362:20 363:6 364:12 365:24 366:2 367:13 368:1 377:22 379:23 380:6,24 381:25 384:14 386:8,19,25 395:4 407:22,23 413:25 414:10,19 415:3 421:21 422:1,15 424:1,14,17 426:14 429:25 443:11 445:10 447:16 453:10 456:10,15 458:5 462:14,19 463:10 463:24 464:10,20 467:13 482:3,14 482:23 485:2 489:4,10 491:4,20 493:13 494:13,15 494:17,20 495:6,9	497:10 508:2 509:15 510:20,23 511:10,13 513:9 514:14 519:5 524:4 525:7,11 527:7 528:9,14,20 529:5,12,25 part 239:24 264:23 291:22 305:25 322:6 339:21 353:12 356:12 378:6 379:5 381:11 390:4 425:4 448:14 455:8 457:4 464:8 473:10,13,16,19 475:11,11 476:13 492:10 493:22 513:24 521:4 523:4,13 525:6,10 526:1 participants 266:22 321:5 406:17 513:23 514:4,8,15 515:5,9 515:13 participate 326:1 377:13 381:11 402:12,18 405:23 406:1 434:5 454:20 456:1 466:9 478:18,19 participated 377:18 402:9 411:1 participating 514:23 participation 453:6,9,14 454:3 454:17,23 455:3	455:10,19 particular 245:5 255:25 339:21 347:14 483:12,13 486:15 509:21 515:22 519:1 particularly 457:24 parties 273:14,20 274:11 297:5 366:13 467:25 468:2,12 party 340:7 453:19 454:10 456:21,22 457:2 468:4,6,14,19 passing 296:5 522:1,22 password 353:13 353:14 path 512:10 patrol 264:13 299:8,18 355:7,10 pc 351:7 355:20 pedestrian 503:21 503:25 504:15 pedestrians 512:9 penal 333:6 334:3 334:7 340:12 341:1 350:17 351:7 356:14 397:20 400:13,25 467:18 473:4 523:11,13,14,17 523:18,22 525:9 525:12,14,18,24 526:7 527:24 528:8,17 pending 406:22 people 267:24 298:14 309:9	315:4,8 316:12 317:3 343:7 357:7 366:6 367:25 371:22 385:20 393:25 394:3,5,22 395:16 412:7 417:24 457:4,7,7 468:2 469:23 497:9 515:4 519:12,19 520:13 521:18 people's 517:24 percent 245:11 250:7 258:6 261:22 333:9 335:4 374:23 480:7 percentage 411:5 performance 414:16 performed 319:23 408:22 period 287:19 304:22 305:5 359:21 370:15 464:1 periods 446:2 permission 495:18 526:13 permit 239:20 240:8 241:4 242:17 243:13 244:17,25 245:7 246:24 247:11 248:22 249:4 250:14,24 251:5,5 251:9 252:7,17,20 253:3 254:10,13 255:17 259:14 260:6 261:21 266:6,18,18 267:1
---	---	---	--

[permit - physical]

267:4,15 268:9,14 268:17,20,23,24 269:1,2,6,8 363:17 363:18,20,21 364:13,17,20 365:2,23 368:3,8 368:14,25 369:3,6 369:10,11,12,15 370:2,3,13,16,25 371:8,18 372:8,14 372:20 373:4 374:8,12 375:13 378:22,23 379:6 381:11,16,16,21 383:3,5,13 384:11 384:14,21 386:8 389:2 390:16,19 391:17,22 392:12 392:17 393:4 398:4 401:24 402:3,5 406:7,21 409:4,9 410:11,14 412:18,22 415:2,6 415:11,18 417:1 417:10,22 418:1,2 418:19 419:1,25 420:9 421:2,5 422:3 423:1 425:13,19 427:19 428:20 429:4,6 430:2,23 431:1,2,6 431:13,22 432:2 435:21 436:4 437:5,19,20 438:1 438:12,13 439:3 440:2 441:3,9,19 441:24 442:2,8,20 443:1,9,11,24 444:3,13,17,25 445:12 446:3,8,18 447:15 448:15,20	450:2,5 451:12,19 452:7,9,23 453:23 454:8,15 455:17 458:9,25 459:13 459:15,20 461:18 462:10,13,17 463:4,9,17,23 464:3,4,5,8,15,16 464:18 466:17 467:14,20 468:12 470:20 471:1,9 472:11 475:1,5,10 475:21 479:4,7,11 479:11,18,20,24 480:2,9,13,19 481:2,7,8,12,13,16 482:1,11,13,20,22 483:4,8,19,21 484:3,7,9,16,18,21 485:1,5,9,14,16 486:16,21 487:6 487:14,15 488:22 489:17,25 490:3,4 490:9,12,19 491:4 491:6,23,23 492:21,24 494:25 495:5 496:7,9 497:11,17,23,25 498:5,10,23 499:11,13 500:1,4 501:10,15 504:5 506:7,17,18 507:13 508:7 509:22 510:11 514:5,14,25 515:7 515:24 516:21 517:9 519:23 520:10 521:6 524:3,6 525:8,15 526:8,11,12,20 527:19,19,21	529:14 530:1,2,5,7 530:11 permits 240:3,5,13 240:18 366:11 367:2,12 370:15 371:13 388:22 410:16 426:19 432:16 433:7 436:12 453:16 464:1 467:24 469:4 481:23 482:4,15 490:8 491:21 493:4,24 493:25 495:21 503:18 506:3 508:3 515:4 517:20 523:10 permitted 242:13 267:18 382:25 426:22 429:3 450:11 permittee 489:3 permitting 240:6 243:25 244:24 364:1 381:3 441:13 446:6 495:23 498:7 517:15 525:16 526:8 530:17 person 241:24 244:23 268:4,9 296:20 297:3 299:13 305:14 317:22 318:8 332:24 336:19 337:4 340:10 341:2 353:10,20 355:22 375:20,21 380:15,17,20,25 381:20 382:1 384:13 388:4	416:10 418:3,8 422:2,10 423:25 432:5 455:16 471:6 483:13 484:7,18 488:9 500:14 509:14 531:5 personal 291:16 305:10 319:24 320:1 355:12 358:10 362:18 363:19 422:17 personally 257:13 257:14 275:4 320:14,16 334:2 413:3 perspective 304:20 306:2 364:14,16,25 365:1 384:7 398:16 430:18 519:14 521:11,17 pertain 363:20 pertaining 487:25 488:5 pertinent 273:20 484:3 phone 268:2 302:25 303:5,8,10 303:11 307:8 338:5 375:21 380:2,7,15,20,25 381:14,17,20 411:4,6 416:9 471:5 phoned 335:2 photo 327:1,9,12 476:17 509:20 photos 476:20 physical 295:5,8
--	---	--	---

[physically - policies]

<p>physically 295:21</p> <p>pick 439:14</p> <p>picture 266:22 270:17 334:5 511:17</p> <p>piece 383:10 392:21 393:2 514:16</p> <p>place 237:3 241:10 241:14 242:21,23 243:1,4,13,24 245:17 247:10,12 251:23 282:13 286:8,10,16 324:8 324:10,16 325:23 366:2 367:20 368:2 382:4 388:12 414:15,20 415:5 426:21,23 427:1 438:6,10,16 439:16,17 440:23 441:17,21 443:13 445:17 446:15 447:17 448:2,4 450:10 485:3,17 495:13,18 506:14 507:22 529:6 534:8,10,16</p> <p>places 242:24 243:7,14,21 469:21</p> <p>plaintiff 229:5 233:14 235:20 278:5 280:16 310:5 312:16</p> <p>plaintiff's 231:2,6 232:2 247:21 260:11,18 265:9 269:20 287:1 298:7 301:7 311:11 314:4</p>	<p>345:19 354:1 360:1 365:3 385:2 399:15 405:14 411:20 416:15 435:3 457:11 466:20 470:6 471:20 501:1 507:2</p> <p>plan 375:9 397:7 397:11 407:25 476:12 500:10,16 503:18 504:1,12 504:17,18,19 505:1,5,5</p> <p>planned 437:17 508:15,17 509:16 511:18</p> <p>planning 244:21 250:11 392:10 503:25 511:9 522:3</p> <p>plans 499:23,24 500:4,8 507:21</p> <p>play 321:21 329:24 336:3 337:9</p> <p>played 329:2,4</p> <p>playing 321:24 328:12 331:25 332:6 336:1,6,6,7 336:10</p> <p>please 235:15 236:8 261:1,10 325:8 336:2 361:3 375:8 447:18 481:15 501:13 515:16 516:11 518:6 523:2 527:11</p> <p>point 253:2 258:11 259:16 266:25</p>	<p>326:8,23 327:19 328:1 352:9,19 372:7 380:22 388:25 390:5 391:21 396:13 397:7,16 417:4 418:11 419:18,18 438:15 439:25 441:24 442:10 443:8 445:9,25 477:7 479:6 480:1 481:6 487:12,20 487:24 488:23,24 489:2 502:8 505:19 507:20,20 509:8 512:15 516:4,10 518:25 522:9 523:1 524:8 524:22 525:2</p> <p>points 420:17 421:11 422:25 425:2,3 438:18,22 440:4,5 442:5 443:21,23 444:2,9 444:12 446:17,21 467:17 474:8,9,12 475:13 479:14 488:19 489:23 516:3</p> <p>police 231:11,17 231:20,22 232:7 244:21 250:11 251:15,16 253:12 253:23 254:4 255:6,20,22 263:9 263:10,14,22,23 263:24 264:5,12 264:19,25 270:7 272:10,18,20,23 272:24 273:4 275:16,22 287:10</p>	<p>287:21 289:12,16 290:25 291:5,6,8,9 291:10,12,14,23 291:24 292:1 294:16 296:16,19 297:22,25 298:4 300:15 301:19,24 303:14 304:21 305:11,13,18 306:6,19,25 308:14,23 309:11 315:15 316:7,8 317:15 318:23 319:19 320:19 325:21 326:10,18 327:13,20 330:23 333:2 341:11,13 341:14,19 342:24 343:13,14,21 344:3 345:16 346:20 349:12 351:6,15,16,18,19 352:10 354:11,12 356:19 357:3,4 360:8,9 362:20 363:6 364:12 366:15 377:17 384:6 395:22 398:17 436:1 450:17 489:4,10 504:22</p> <p>policies 240:11,17 240:20,23 369:25 424:14,17 430:14 432:25 453:9 462:14,18,19,21 462:23 463:1,5,9 463:24 464:9,19 467:13 469:9,13 482:2,14,23 483:1 483:3 519:23</p>
--	--	--	--

[policies - process]

<p>523:10 525:7</p> <p>policy 242:10,22 287:22 288:1,3 330:20 363:6 379:23 380:24 388:9 416:1 426:13,20,24 429:24 430:15,19 451:9,10 469:3 521:5 522:9 525:10 528:13,19</p> <p>political 302:21 303:17 327:23</p> <p>pop 448:9</p> <p>pops 345:18 354:4 385:5 416:13 417:15</p> <p>portable 424:24 513:13</p> <p>portion 277:14 282:15,19 284:13 309:20 314:12,17 322:11 329:2 336:6 468:3</p> <p>portions 468:9</p> <p>portola 407:23</p> <p>posed 384:20 505:11</p> <p>position 288:10 298:25 410:8 475:3 511:12</p> <p>possession 523:16 523:23</p> <p>possibility 294:20</p> <p>possible 352:5,7 440:18 495:12</p> <p>possibly 289:2,5 293:3 318:7 421:6</p> <p>post 271:19 277:4</p> <p>posts 294:5 295:22</p>	<p>potential 344:1</p> <p>potentially 244:5 495:13</p> <p>power 263:23,25</p> <p>powerpoint 282:25 283:4,6 472:5,9,10,13 473:20 474:4 475:23</p> <p>practical 468:22</p> <p>practice 291:22 351:8</p> <p>predominantly 387:5</p> <p>prefer 326:19</p> <p>preferable 300:22</p> <p>preliminary 404:20 405:1 437:20</p> <p>prep 236:25 237:5 237:21</p> <p>prepared 354:16 354:20 478:21</p> <p>preparing 352:22 405:23 478:19</p> <p>present 234:18 265:2 281:18 286:6 313:20 324:6 421:2 514:20 534:6</p> <p>presentation 472:6 474:4 475:7 475:19</p> <p>presentations 424:23</p> <p>presented 256:24 268:22,23 269:1 472:10 478:23 480:3</p> <p>pretty 401:12</p>	<p>previous 393:24 408:16 419:22 459:19 508:22</p> <p>previously 282:8 290:20 291:1 325:2,10 367:10 368:7,9 373:6,8 395:9 417:12,14 435:13 439:22 448:8 464:23 465:4 478:16 480:25 481:2,16 490:18 494:23 496:6,20 498:19 512:1</p> <p>primarily 436:11</p> <p>primary 299:13</p> <p>printed 363:23 368:16</p> <p>prior 241:19 287:10 291:7 298:22,23 302:4 320:9 360:17 361:22 364:6 367:10 368:10 381:15 407:24 415:14 421:14 460:2 520:3</p> <p>privacy 273:12,13</p> <p>private 453:18 454:1</p> <p>privilege 237:14 273:25,25 274:1 282:10</p> <p>privileged 258:19 262:2,25 394:11 394:13 449:20</p> <p>privileges 274:12</p> <p>probable 264:15 265:2</p>	<p>probably 237:4 238:19 241:22 320:11 343:19 399:10 434:21 469:22</p> <p>problem 443:6</p> <p>problematic 487:1</p> <p>procedure 239:22 388:9 451:9,10</p> <p>procedures 239:3 239:9,10,19,22 240:21 482:2</p> <p>proceed 236:8</p> <p>proceedings 235:10 286:16 324:16 534:16</p> <p>process 238:24 239:1,24 240:6 241:4 244:1,17,24 247:4,17 250:16 251:6 252:17 253:2 269:8 327:15 363:16 364:1,13 365:23 366:3,8,10,21,24 367:19,20,23 368:2,15 370:9 375:14,16 376:12 377:1,5 378:6,22 379:5 389:7,21 390:19 425:11 431:18,21 432:24 433:3,12 436:22 438:16 441:9,10 441:11,13,14,25 442:24 446:6,6 459:13 462:22 464:2,8 465:25 467:20 479:6 480:2,19 481:11 490:11,14 497:23</p>
---	---	--	--

[process - purposes]

<p>526:2 530:17 531:15</p> <p>processed 249:25</p> <p>processes 498:8</p> <p>processing 368:3 379:6 415:17 483:7 504:5</p> <p>produce 282:11 413:5</p> <p>produced 233:7 271:13,16,21 280:7 287:13 292:2 297:14 312:7 320:25 321:14,18 330:4 334:22 345:16 420:5,8 445:22 470:21</p> <p>producers 512:15</p> <p>producing 296:8</p> <p>product 237:14</p> <p>production 426:9 426:15 482:15 486:3 514:23 517:20 520:1 523:5,20 524:11 524:24 525:6 526:2</p> <p>productions 518:3 520:4</p> <p>profession 403:7</p> <p>professional 527:11</p> <p>professor 283:9</p> <p>profile 283:17,21 283:23</p> <p>program 238:23 239:1,8</p> <p>progress 417:10</p> <p>prohibited 287:20 288:4</p>	<p>project 506:23 507:16</p> <p>prompt 331:13</p> <p>prompted 297:21 297:25 301:23</p> <p>pronounce 483:17</p> <p>prop 266:19 267:16 268:10</p> <p>property 302:13 302:17 395:1 488:1,5</p> <p>proposal 440:11 441:20 479:9 480:4</p> <p>propose 438:23 439:11,16</p> <p>proposed 420:19 420:20 424:19 427:13 439:5 473:14 476:6 486:3 506:23</p> <p>proposing 426:9 438:16 444:24 492:14 498:14</p> <p>prosecute 401:20</p> <p>prosecuted 290:16</p> <p>prosecution 343:5 343:11,18 344:1 345:12 346:22 354:13 356:17 367:3</p> <p>prospective 275:5</p> <p>protected 353:13</p> <p>protective 271:16 282:12,16</p> <p>protest 264:24 267:4,19 268:15 275:15 276:2 288:15 289:7,10 289:13,15,25 290:15 293:19</p>	<p>294:21 295:17 296:15 297:21,25 298:4 300:19 302:10,17 304:23 305:6 307:2 326:15 332:22 402:8 404:1 426:10,15 430:1 438:11 444:22 445:11 492:14,19 509:2,2</p> <p>protested 293:7 363:8 440:1 512:2</p> <p>protester 363:7</p> <p>protesters 273:8 273:10 274:5 275:1</p> <p>protesting 292:13 296:25 297:6 300:2,13,23 301:2 305:1,9 326:20 395:1 509:5</p> <p>protests 264:2 275:6,8,12,12,20 275:21 289:14 293:14 300:5,9 306:18 320:15,20 326:5,11 361:7 395:4 406:12 407:21,22 439:21 446:7</p> <p>provide 295:24 375:8 460:8 505:16 513:23 524:5</p> <p>provided 269:11 271:24 296:4 370:8,12 383:2 387:10 389:20 392:15 397:14 415:4 422:21</p>	<p>423:19 447:25 461:18 474:18,20 475:23,25 476:2 476:11 477:6 508:16,23 512:5 512:13</p> <p>providing 296:2</p> <p>proximity 528:6</p> <p>psychiatric 319:23</p> <p>psychological 319:22</p> <p>public 244:20,21 251:16,16 256:25 294:22 295:1 300:17 302:18 305:11 316:19 434:12 439:22 450:14,15 455:23 455:25 456:4 468:23 469:7,16 469:19 483:10,14 485:21 487:3,5,13 488:20,25 489:16 489:24 498:12 500:19 504:22 519:7,14,17,21 520:5 521:11,16 521:24 528:25 529:8,9,10,13</p> <p>published 366:24 368:13 380:6 488:6 496:8</p> <p>pull 510:8</p> <p>pulling 321:13</p> <p>puma 330:18</p> <p>purpose 380:10 398:10 427:14 429:20 457:20 514:18</p> <p>purposes 262:17 477:17 515:19</p>
--	---	---	---

[purposes - recall]

<p>516:8,13 pursuant 233:3 280:3 282:12 312:3 purview 299:16 451:14 put 308:24 314:11 364:16,19 365:1 382:24 454:9 472:13 473:19 474:5 475:7,16,19 475:24 509:7,10 509:11 511:22 512:3,7,16 513:15 putting 366:2 371:12 509:13 pyrotechnics 487:10</p>	<p>392:6 398:5,8,11 398:23 400:9 404:6 417:11 421:22 428:22 430:3,13 431:14 434:20 437:14 443:15 451:20 454:5 455:11,14 455:21 463:11 476:9 477:11 479:25 485:11 486:10 487:17 493:11 500:15 501:23 502:11,16 502:19,21,22 503:5,12 512:6,18 513:22 514:16 516:16 517:1,25 518:8 522:8,15,19 524:20 526:4,18 526:19 527:17 528:25 530:18 questions 230:10 251:21,22 282:14 338:1,7,9 340:11 359:23 368:14 372:16 374:12,21 382:20 384:9,19 386:13 397:11 408:9 413:12,14 413:15 414:1,25 419:19 420:23 421:4 481:5 501:14 502:2,9 503:1 505:11 507:15,17 513:21 513:22 515:16 519:13 530:11 531:15,21,22 quick 319:7 434:16</p>	<p>quickly 527:4 quite 252:22 258:25 263:2 302:13 305:24 488:7 quote 342:6 388:6 401:6,8,8 404:19 476:13 526:22 quoted 341:1</p>	<p>real 244:8 266:20 reallocating 309:9 really 241:9,19 308:18 334:6 370:22 505:6,13 reason 319:4 345:22 356:13 382:15 396:17,20 400:21 473:8 474:1 476:18 reasons 396:22 420:11 423:1 438:1 444:11 recall 236:15 240:14 254:12 256:2,12 267:25 270:21 282:10 283:5,7 289:18 290:7,11,13 292:10 293:4 294:1,2,9,13,16,17 294:22 295:7,9,10 295:13,20 296:6,7 296:8 297:13,20 297:24 299:6,25 300:3,4,6,7,10,11 300:24 301:1,4 321:19,20 326:3 327:1 332:17 333:15 335:1 336:21 342:20 343:23 345:13 360:25 361:17,21 366:25 371:15 373:5 382:11,14 382:15 399:6,11 402:4,5,10 406:23 406:24 408:10 413:6,7 414:8,12 415:13 418:21 419:2,3,7,9 420:1</p>
<p>q</p>		<p>r</p>	
<p>qualified 384:13 422:2 424:1 509:15 531:5 qualifies 371:15 454:4 qualify 372:1,8 390:23 391:6 420:21 426:15 454:7 455:10,19 456:17 457:3 question 237:13 237:15 239:17 245:8 246:22 267:7 273:17,19 292:5 297:10 308:3,5,11 317:2,8 319:17 325:19 329:18 336:22 337:3,14 339:5 343:1 369:22,24 372:5 374:20 375:3 382:3 392:2</p>		<p>raised 452:14,15 479:22 raising 480:16 rambling 364:23 ran 328:23 rating 502:13 rdr 229:20 278:19 310:19 reach 377:10 438:9 reaction 520:6,12 521:19 522:23 reactions 517:24 read 255:15,16 261:13 285:4 318:20 323:4 374:14,16 448:22 448:23 457:14 460:21 491:8 501:16 516:2 519:16 533:4 reading 422:6 423:22 429:2 430:18 449:1 501:20,22 502:5 505:13 reads 462:8 ready 273:5 275:11</p>	

[recall - related]

<p>437:16,18,21 440:24 442:24 445:20,21 474:1 493:16 498:16 508:19 receive 294:19 297:8 received 255:13 303:12 327:12 376:10 386:22,24 394:14 409:15,16 412:10 442:5 446:13 458:24 receiving 296:7 437:22 recess 328:4 recipients 395:18 recognize 248:16 248:17,18 253:9 260:24 265:24 287:8,9 301:14,15 328:18 329:7,9 332:11 336:14,16 346:3,12 354:10 354:11 360:8 365:10,11,11 367:11 373:17,18 374:7 385:15 405:21 412:1 448:12,13 467:1,2 470:11 471:24 491:1 496:25 499:10,11 recollect 361:10 431:19 recollection 260:2 271:17 293:1 294:4 326:6 352:8 368:5,19 377:7 383:9 407:18 409:1 420:10</p>	<p>425:24 433:2 437:3 445:13 448:18 449:16 452:17,24 460:15 461:13 480:7 490:13 508:18 recommendation 244:22 reconsidered 481:8 recontact 379:14 433:20 record 235:2 236:1 248:5 249:12,14,15 262:17,20 265:12 276:19,21,22,25 284:12 298:10 301:10 314:8,18 318:20 319:10,12 319:13,16 322:10 328:2,5 329:2 332:7 336:3 337:11 339:1 342:3 354:6 359:11,13,14,20 361:4 373:14 395:12 402:24,25 403:2,3 411:23 417:17 434:23,25 435:1 438:19,19 441:1,3 442:23 448:15 457:15 460:21 473:10,13 473:17,19 474:5,7 477:2,4,9,12,15,18 477:19,21 478:2,8 478:9,11,12 490:22 495:2 497:2 518:18,20 518:22 519:16</p>	<p>529:19,21,22 532:3,8,8 recorders 330:18 330:21 recording 328:12 328:15,19 329:20 331:7,8,10,25 332:6,12,18 336:1 336:2,10,13,15 337:4 338:12 339:20,21,24 340:15,17,23 341:20,22 342:8,8 recordings 330:21 recreation 459:16 recruit 341:10 recurring 375:3 red 386:1 refer 293:23 342:7 343:25 347:14 348:7 349:15,25 356:17 396:1 435:16 437:24 446:13 447:10 458:1 508:21 reference 273:5 275:11 462:17 referenced 264:21 283:11 referral 354:13 referred 238:10 265:4 270:21 316:11 317:2 343:4,17 345:11 458:14 462:19 referring 253:25 293:25 315:8 321:8 332:18 333:1,17 339:21 339:23 344:20 392:16 397:25</p>	<p>419:14 423:9,16 436:18 447:1,8,9 462:24 483:24 489:6 512:23 524:25 refers 283:20 315:1 349:3 350:17 370:24 414:14 487:24 495:12 reflected 247:1 367:19 416:2 reflects 350:19 351:4 refuse 251:9 regard 447:17 regarding 240:12 256:6 258:8 259:12 271:11 277:9 282:25 289:1 294:20 364:8 389:2 417:25 420:9 422:3 450:10,12 466:6 470:19 471:8 498:4 517:1 530:16 regardless 390:21 528:6 region 275:8,18 registered 523:16 523:24 regular 291:22 299:18 reiterate 521:24 rejected 251:5 rejecting 505:1 relate 283:2,4 335:12 365:22 related 330:8,12 367:2 412:17</p>
--	---	--	---

[related - reserve]

<p>453:10 501:24 502:12,23 relates 346:17 436:3 507:12 529:3 relating 266:1 351:23 406:11 407:16 435:20 508:2 519:23 523:10 525:8 relatively 400:18 relay 335:16,18,22 relayed 268:7 400:23 445:18 release 468:19 relevant 237:13 273:12,13,21 398:3 472:19,22 474:9 506:22 514:23 515:23 516:20 520:20 525:22 relied 387:16 remarkable 343:24 remember 255:19 294:3 296:2 326:21 361:24 408:14 419:7 420:2 437:18 480:11 531:14 remembered 233:3 280:3 312:3 remote 235:10 remove 447:3,5,6 447:7 render 432:11 renewed 267:3 449:12 450:4,20 rent 456:10</p>	<p>repeat 369:21 455:14 524:16 rephrase 246:22 258:20 304:25 318:21 343:2 415:24 454:13 526:5 reply 298:16 report 231:18,20 231:22 286:15 289:25 290:4,25 291:5,10,14 299:4 324:15 334:11 335:10,13 336:4,5 345:4 346:16,17 346:20 350:1,3,8 351:3,6,10,13,15 351:17,18,19,21 351:22 352:6,9,10 352:10,16,22,25 353:3,6,9,12,17,21 353:22 354:11,12 354:20 355:1,10 355:15 360:9 401:19 478:16,19 478:22 479:1,2 534:15 reported 290:18 295:18 296:25 299:7 398:13 401:17 reporter 233:6 235:13 239:14 246:15,17 249:7 249:11 280:6 284:8 286:11 312:6 318:17,18 318:20 319:4 321:23 324:11 361:1,2,5 385:1 399:14 460:19,21</p>	<p>470:2 500:23 519:15,16 524:16 532:10 534:11 reporter's 286:1 319:3 324:1 534:1 reporting 290:7 290:11 295:10,13 297:5 321:23 reports 291:12,24 292:1 351:2 353:16 represent 235:16 252:16 466:11 representative 236:23 267:14 283:14 366:17 371:2 385:22 402:12,15 408:12 418:6 421:21 422:15 473:7 511:13 527:7 representatives 371:4 395:5 represented 471:14 request 245:1 282:15 375:17 377:25 389:14 470:19 493:13 498:10 519:1 526:13 528:18 requested 243:23 245:1 356:9 377:8 392:22,25 393:3 421:10 424:12 425:3 440:9 478:22 505:16 requestee 244:7 requester 242:17 requesting 241:24 244:7 375:18</p>	<p>377:2 381:7 382:11 389:7 409:18 421:13 requests 412:20 419:16,24 443:7 443:12 447:16 448:1 523:2 require 296:16,18 486:4 506:17 517:16 525:14 526:7 528:8,15 required 245:6 250:22 330:18,20 375:2 390:16 391:15 424:13,16 429:25 457:6 467:21 484:9,15 500:11,17 503:18 504:13 512:14 531:8 requirement 453:8 482:13 506:18 508:1 514:3,13 523:14 528:8 requirements 243:13 245:20 246:24,25 414:20 415:5 426:23 427:2 484:8,19,23 496:5 499:25 requires 453:14 484:2 requiring 523:18 reroute 503:19 research 333:5,15 333:24 334:2,8 355:12 reserve 270:11 274:16</p>
--	--	--	---

[residential - robinson]

residential 457:4 residents 302:25 456:25 468:12 485:21 resolve 459:14 resolved 360:13 360:20 361:9,14 resolving 361:16 resource 306:2 resources 300:19 300:20 305:11,19 306:3,7,17,22 308:25 309:6,10 respect 254:4 255:17 256:11 422:7 423:17 457:23 517:8 respond 289:20 296:17,24 334:24 335:3 376:11 398:22 436:15 437:1 503:14 responded 297:2 334:25 335:1 503:4,5,10,13 responding 298:4 responds 413:12 response 231:5 260:18,20 261:13 264:22 265:5 304:19,24 335:5 335:20 339:13 399:25 407:25 413:13,15 417:25 436:17,19 447:14 494:2 503:24 504:4 responses 386:13 413:25 493:16,20 493:22	responsible 366:2 436:11 rest 388:4 390:10 restrictions 245:20 247:3 restroom 424:24 513:13 518:16 result 414:21 resulted 343:10 346:22 354:12 393:8 422:22 423:20 439:12 results 295:1 resuming 236:12 retired 270:9 return 359:23 review 238:4,6,8 321:2 333:12 334:12 335:10 356:9 378:17 380:23 383:20 397:17 399:3 404:19 405:11,12 408:21 431:25 432:3 433:13,15 436:3 reviewed 237:24 238:15 261:7 320:24 reviewing 238:2 367:22 371:17 revised 452:12 453:3 ridiculous 447:3 ridley 234:4 281:4 313:5 rifles 428:3 right 236:18 249:6 260:16 262:10 277:1 288:6,11 291:10 292:6	293:12 294:23 302:18 303:6 304:23 305:3,6,18 315:1 337:6 341:12,16 346:8 346:25 348:5 350:21 352:11,12 357:20,23 358:17 359:9,22 360:17 365:6,14 376:19 378:7 384:23 385:17 390:6 395:13 397:1 399:23 400:1 401:1 406:12,18 407:2 409:15 410:12 412:3 423:7 431:3,13 432:13 433:24 434:2,8 435:21 436:8,12,13 439:22 455:1 456:19,23 458:20 459:8,22 463:16 463:16 464:7 467:25 468:17 470:14 471:4,9 472:25 475:1,10 479:4 481:13 483:23 485:13,18 485:25 486:13 487:3 490:3 491:18 494:3 497:11 499:8 501:15 502:2 503:7,20 504:20 507:13 508:8,17 509:3 510:18 511:3 516:4,17 518:15 530:7 531:2	rights 274:16 276:2 288:16 ring 270:15,24 271:2 272:5 277:8 risk 317:22 rmr 229:20 278:19 310:19 road 263:12,16 264:3,21 469:24 492:1,6,9,12,13,24 493:3 495:9 509:24 510:4,18 510:22 511:3 roads 503:6 roadway 493:6,9 494:8,13 504:16 508:14 robert 395:23 435:25 roberts 301:17,19 301:22 302:7,20 304:9 robinson 230:3 233:15 235:17,17 235:25 236:4,9 237:16 238:19,21 239:15 241:5,13 243:11 244:2 246:16,21 247:23 248:3,7 249:7,9,17 250:21 258:20,21 260:13 262:9 263:2,5 264:1,18 265:11 266:12 267:21 269:22 271:12,18,22 272:3 273:15 274:2,14,19 276:17,24 279:3 280:17 282:4,18 282:20 284:11
--	---	---	---

[robinson - says]

287:3 289:3 297:15 298:9 301:9 305:23 306:5,13,15 307:10,20 308:4 308:13,22 309:14 311:3 312:17 314:1,7,14,17,19 315:19,21 316:10 316:24 317:1,14 318:21,22 319:2,6 319:15 321:25 322:9 325:1 327:25 328:7,13 329:4,6 331:23 332:1,4,7,10 336:7 336:11 337:16,21 338:18 339:4,10 339:23,25 340:14 341:4 342:11 343:2,3 345:25 346:2,8,11 354:3 358:23 359:9,16 360:3 361:6 364:9 365:5,17,21 369:23 370:10 372:4,6 374:18,19 376:3,5 378:20 379:4,18 382:10 385:4,10 386:15 386:18 388:7,19 390:3,11 391:3,20 392:3,14 394:16 399:17 401:9 402:23 403:5 404:5,24 405:16 410:6 411:16,22 413:2,23 414:5 415:24,25 416:11 416:18 424:11 428:13 430:12	434:15,20 435:5 443:25 444:14 446:20 447:5,9,13 448:25 449:6,22 451:8 452:6 455:15 457:13,23 458:3 461:6 463:19 464:17 466:17,22 467:22 470:3,8 471:23 474:23 476:16,24 477:5,14,17 478:14 484:17 485:7 486:11 487:22 491:17 492:22 494:18 496:19,24 497:1 498:22,25 499:3,4 500:24 501:3,17 503:11,15 505:9 506:19 507:4 510:11,13 517:6 518:7,13,17,23 519:20 521:2 522:25 524:18,21 525:2,4 526:5,6 527:12,15 529:2 529:16,24 530:6 531:20,24 532:2,6 robinson's 246:19 role 341:19 483:15 513:24 romanette 516:4,4 516:6,10 rome 234:4 281:4 313:5 romero 298:15,17 298:24 299:2,21 304:11 rosewood 303:23 303:25 304:2	385:22 386:7 394:24 402:15 406:10,18 417:21 418:10 rounds 292:15,21 315:17 roundtable 408:8 route 375:9 492:5 492:10 routed 465:18 rpr 229:20 278:19 310:19 rt 349:21,24,25 ruled 530:23 rules 370:22 runs 501:7 s s 231:1 232:1 311:10 332:16,16 348:1 safe 469:22 safety 246:4,6,10 247:6,7 256:24,25 256:25 292:9,12 296:13 300:18 305:12 316:19 450:14 468:23 485:21 487:3,5,13 488:21,25 489:16 489:24 498:12 515:18 516:7,13 517:2 519:7,14,17 519:21 521:11,17 521:24 522:7 529:1,8,9,10,13 salient 474:9,12,21 476:14 san 234:6 264:14 271:20 277:5 281:6 313:7 407:24	sand 263:12,15 264:3,21 492:1,6 492:13,23 493:2 494:25 495:8 508:8 509:24 510:4,11,17,22 511:2 sanitation 246:7 246:11 247:2 santa 510:23 511:10 satisfaction 446:22 satisfactorily 415:1 satisfactory 421:5 421:7 489:4,9 satisfied 384:21 496:9 satisfy 442:7 saw 282:23 321:20 405:9 saying 245:10 259:2 292:10 295:20 301:1 305:13 329:15 337:4,10 338:5,23 339:18 340:2 379:17 393:20 445:5,6 461:10 468:19 474:1 503:5,13,14 says 247:25 299:21 303:23,25 347:2 349:21 351:4 354:16 367:18 369:1 373:23 376:14,15 378:17 380:12 400:8,16,17 401:7 404:18 424:10
---	---	---	--

[says - sergeant]

430:21 437:13 438:4 469:6 491:11,16 495:12 510:21 512:23 516:11 531:2 scene 335:13,23 348:10,11,17,18 348:20,22,23 352:20 355:18 356:21 488:12 schedule 242:2,4 315:5 schematic 425:5 508:6,11,13 510:6 school 316:21 scope 268:17 screen 269:15 352:12 373:10 385:6 screenshot 508:23 508:25 scroll 270:5 se 366:10,14 seal 282:15,18 284:9 314:12,14 sealed 284:12 322:6 second 231:5 242:22 248:9 260:9,17 270:13 292:16 346:5,6 385:8,25 406:9 409:21 413:11 418:8 419:12 421:10 423:10 426:3,4,5 433:10 450:24 458:12,13 458:14,24 459:1 459:11 460:5,23 460:25 503:2	secondarily 442:15 secondhand 358:12 seconds 328:25 329:5 332:2,4,8,9 secretary 255:5,10 section 249:20,24 252:6 325:13,14 325:15 333:6 334:4 340:12 341:1 349:2 350:17 351:7 356:10 368:25 375:8 376:6,21 379:19 400:13,18 404:21 409:8 473:4 487:8 492:13 493:2 495:12 510:21 523:18,22 sections 397:21 see 249:22 250:3 250:12 252:8,13 253:18,25 260:19 261:18 270:15,19 277:5 283:21 287:6 299:23 301:12,15 303:19 303:24 314:3 315:6 321:21 325:6,17 347:3 349:5,22 350:11 350:16 352:12 354:17,23 355:23 367:9 368:11 369:4,8 375:6,10 376:7,16,17,24 379:21 386:4 387:6 389:10 393:21 396:2,11	397:22 411:14,17 412:14 413:13 414:17 416:17 420:15 423:4 426:11 427:16 430:17,24 432:8 435:12,13 437:14 438:7 447:19,24 453:6 454:25 459:3,9 460:10 462:3 465:3 467:10 468:25 472:6,9 481:18 483:22 484:4 485:17 488:2 492:10 495:15 501:24 502:14 507:5,10,24 510:5 510:15,24 513:3 514:1 515:20 516:14,15 523:6 524:12,25 seeing 437:16 seeker 490:9 seeking 470:22 484:7,18 491:25 493:25 seen 253:11 266:1 270:12 295:18,20 321:17 351:15,22 470:25 514:7,11 520:15 524:6 select 406:4 selected 371:4 selecting 406:1 self 317:25 selling 388:3 send 294:25 334:19 335:10 356:8 394:20 401:19 405:10	seniority 347:20 347:24 348:1 sense 244:6 245:12 441:14 454:6 459:12 469:11,21 519:13,17 521:17 sensitive 271:4,9 272:13,21 273:7 362:21 sent 288:25 301:17 301:22 302:1 304:9 315:12,22 333:11 334:4,16 385:17,19 395:15 395:18 408:25 409:12,20 417:1,5 417:8 418:19 419:8 425:8,12 438:20 442:14 458:15 459:10 530:25 sentence 469:6 sentences 426:5 sentiment 326:17 separate 277:13 304:7 309:19 375:9 516:10,16 separately 229:10 229:13 272:4 september 232:8 232:16 286:21 298:19 324:21 407:16 417:4 497:7 534:21 sergeant 256:15 256:16,19 270:4,6 283:11,20 284:2 287:25 298:19,20 298:21 299:2,4,7,9 299:10,12,17,19 299:20,21,25
---	---	---	--

[sergeant - somewhat]

300:8 302:1 304:10,10 325:16 326:3,14 329:11 329:19 332:15 333:16 335:19,20 342:22 343:6 344:4,11,12,20 345:2,7,10,14 354:22,25 355:4,4 355:6,6,7,8,13 356:6,16 366:16 411:10 serial 523:3,8,12 523:19 524:5 series 250:11 252:13 269:23 298:13 435:20 501:6,9 515:16 seriously 444:6 serrato 395:21 399:22 400:4,4,23 401:10 404:16 serrato's 405:1 serve 371:5 server 330:22 service 433:11,13 services 244:23 250:2 251:20 375:16 381:8 382:22 383:15,16 419:4,10 431:10 431:23 436:8,10 454:18 459:18 460:9,14 461:5,8 461:16 462:11 465:14 479:16 506:15 session 237:1 367:11 set 242:4 272:8 377:11,22 378:2,7	379:24 388:8 407:20 423:10 480:14,16 489:8 495:20 505:17 setting 366:20 setup 424:20 512:6 seven 332:8 477:6 477:11,19,20 478:2 sexual 398:1,3 share 247:24 sharon 298:15 299:2 329:11 510:23 511:10 sheet 375:10 sheriff's 264:14 395:5 shift 260:8 330:22 shoot 292:24 510:22 511:9 529:10 shooter 292:17 shooters 316:21 shooting 283:1 shootings 316:21 316:21 shopping 303:2,3 short 299:22 shorthand 233:6 280:6 286:11,11 312:6 324:11,11 534:11,11 shoulder 497:19 show 307:1 408:1 490:18 498:25 512:15 515:17 516:12 517:18 519:3 showed 303:13 400:24 496:15	showing 517:21 520:13 shown 435:7,9 519:12,18 520:5 shows 456:3 sic 332:16 side 250:10 319:3 sidewalk 276:8,12 440:2 504:16 510:22 511:3,8 512:11,16,24 sidewalks 239:6 453:24 503:6 signature 250:3,6 253:18 261:5 285:1 286:23 323:1 324:23 533:1 534:23 signed 261:8 331:12 456:25 468:18 signs 249:4 347:8 347:20 silicon 510:2 511:15 512:15 similar 273:6 490:14 single 383:10 422:5 453:18 455:24 sir 303:4 419:21 526:18,25 sit 254:11 255:18 256:2 293:4 294:1 294:13 300:10 320:3 326:6 335:1 345:13 383:9 406:24 407:18 413:7 414:8,12 452:16 473:25 531:13	site 289:13,17 294:5,21 375:7,9 508:6,10,13 527:22 situation 247:14 264:10 265:1 269:12 273:5 296:23 303:16 317:11 340:10 356:25 357:1 362:15 375:22 408:7 475:13 486:22 517:23 528:5 situations 251:8 307:18 427:6 six 326:23 327:22 361:25 362:5,6 372:25 410:11,17 sketch 499:23 500:3 skip 322:4 slightly 369:24 small 340:25 341:14 soares 332:15 333:14,16 335:19 335:20 342:22 343:6 344:4,9,11 344:12,21 345:2,7 355:5,6 356:7,16 social 294:5,17 solid 396:9 solution 326:4,10 326:15 solutions 234:20 281:20 313:22 somebody 296:19 456:8,9 483:15 somewhat 294:6 364:23
---	---	---	---

[soon - stage]

<p>soon 291:13 505:14</p> <p>sorry 239:16 246:14 265:21 308:3 329:18 330:14 342:25 345:23 362:10 442:5 450:7 459:23 467:2</p> <p>sound 424:18,24</p> <p>sounded 340:9</p> <p>sounds 268:5 334:17 338:5</p> <p>source 294:22 295:1</p> <p>sources 272:25</p> <p>southern 381:22</p> <p>speak 267:22 275:2 304:10 342:12,14 343:5,9 345:10 370:7 378:19 497:16 498:6 531:2,17</p> <p>speaking 241:3 266:10,11 272:14 296:12 299:2 329:8,12 357:13 440:18 505:6</p> <p>speaks 254:5 333:18 338:13 339:1 340:4 342:3 342:8 401:15 405:4 424:5 427:21 439:6 440:4 451:6 482:10 503:9</p> <p>special 231:3 238:23 239:1,5,7 239:20,24 240:12 240:17 241:4,7,16 242:2,7,23 243:13</p>	<p>243:15 244:4,7,16 245:22 246:24 247:11,18 248:17 248:22 252:19 254:10 256:15 268:20 299:6,16 299:17,19 304:6 363:17,20,25 364:13,16,17,20 365:23 366:3,20 366:23 367:2,7,12 368:8,14 369:3,10 369:12,15 370:1 370:13,14,19,25 371:8,13,15,19,20 372:1,8 373:18 374:1,8 375:12 376:3 381:3,11 384:2 387:6,11,17 387:19,25 388:6 388:16,22,25 389:23 390:6,14 390:17,23 391:7 391:12,18 392:21 396:18 407:25 410:15,19,21 411:11 417:22 420:14,21 421:2 426:16,18 429:3 430:23 431:2,6,8 432:16 433:7 435:21 436:11 437:19 441:10,14 441:19,24 450:11 451:12 452:9 453:10,16,23 454:4,15 455:10 455:17,20 456:5,6 456:17,23 458:9 458:25 459:23 460:1 461:1,17</p>	<p>462:10 463:23 465:8 467:20,24 468:11 469:3 471:9 475:15 476:13 480:8,12 480:18 481:7,12 483:4 485:16 490:14 492:20 497:25 498:4 517:8</p> <p>specific 239:2 240:4 247:14,14 252:1 266:11 272:14 330:9 342:6 357:12 362:4 383:7 391:11,14,14 392:21 414:24 419:15 423:20 425:5 426:20 440:18,19 442:24 444:9 445:5 447:16 448:1,4 474:1 487:7 496:2 496:5 503:22 504:24 506:1,23 511:16,17 520:1,9 522:20</p> <p>specifically 239:7 242:24 243:15 254:3,15 271:18 293:5 300:24 301:4 318:15 343:8 356:2 388:15 402:4 421:24 443:4 510:14</p> <p>specificity 390:21 509:12,17,21 510:1 511:24 512:5</p>	<p>specifics 415:16 415:18,19</p> <p>specified 286:8 324:8 534:8</p> <p>specifies 375:8</p> <p>specifying 523:12</p> <p>speculate 393:17</p> <p>speculation 267:10 288:21 340:6,20 369:19 404:4,12 405:5 415:23 430:5 451:22 463:13 464:13 484:12 516:23</p> <p>speed 302:3 304:14,18 343:15 469:24</p> <p>spend 238:20</p> <p>split 292:16</p> <p>spoke 267:24 302:23 342:24 343:7,12 384:8,9 388:24 408:9,15 438:21 449:15,16 460:2 497:21</p> <p>spoken 344:10,13</p> <p>staff 249:24 250:2 252:18 258:18 262:24 288:2 296:14 300:15 356:24 395:7 434:4 466:11 471:14 473:8 475:4 478:16,22 479:1,2 495:24 496:1 501:10 515:18 516:12</p> <p>staffed 275:16</p> <p>stage 511:18</p>
--	---	---	--

[stakeholders - sufficient]

stakeholders 394:23 402:3,6 406:11,16,21 408:3 stamp 270:1 stand 436:17 standard 247:10 428:15 432:3 453:13 504:11 standards 286:19 324:19 506:6 521:21 534:19 standing 513:5 stands 429:1 stanford 283:9 406:14 start 239:16 241:15 246:16 261:11 265:22 272:16 328:8,24 330:1 331:7,23 332:1 336:8 359:16 393:20 484:2 487:23 501:13 started 238:22 299:10,12 301:23 303:10 320:10 351:6,7,10,14 352:5,22 460:17 starting 248:20 298:13 314:21 348:3 412:13 426:6 444:17 458:4 465:9 467:9 468:21 490:23 497:5 501:18 507:7,7 starts 261:17 265:13 347:22 396:8 437:6	447:22 453:2 458:23 state 231:7 235:16 246:2 263:22,24 266:6 286:12,25 307:7 324:12,25 327:15 370:18 427:5,12 428:3 430:19 443:4 463:3 483:5 489:20,22 494:15 496:16 534:12,25 stated 264:25 290:2 316:2 317:10 334:3,9 339:6 342:5 344:15 371:10 387:14 388:23 392:7 405:9 427:4 437:25 441:22 465:24 470:24 475:22 479:14,17 480:6 496:14 502:3 504:3 520:3 521:9,10 526:22 statement 246:18 333:15 337:10 355:19 387:5 404:23 430:10 statements 293:2 293:20,21,23,25 294:10,12 329:20 states 229:1 235:7 275:9 278:1 310:1 326:7 405:7 444:23 523:22 524:1 525:18 stating 505:14 stay 302:15,16 347:17,19	step 252:25 376:10 406:9 461:4,12 463:20 465:20,23 465:24 475:14 stepping 409:21 steps 252:17 253:3 391:16 steve 395:19 stick 315:4 stood 382:19 387:3 389:17 392:9 396:16 397:15 stop 300:1,8 301:2 303:9 305:8 336:2 456:13 stopped 328:20 329:8 stopping 328:1 store 330:8 stored 330:13,24 331:1 straight 464:5 street 234:5 276:6 276:7,10,13 281:5 313:6 454:9 468:4 468:7,9,13,14 streets 244:11 366:13 453:19,24 456:16 510:18 strike 245:4 258:3 274:24 283:8 299:11 304:7 315:20 316:25 342:13 344:7 386:16 394:4,11 394:12 395:25 461:16 503:4,16 513:1 517:13 520:18 521:20 524:2	strip 263:11,15 264:3,20 265:4 266:2 267:5 subfolder 321:15 321:16 330:5,5 subject 264:4,24 266:21 267:6 271:15,15 282:9 287:17 343:8 395:16 438:5 470:16,18 subjective 308:12 submit 405:10 484:3 500:3,7 submits 499:22 submitted 254:14 257:18 269:7 327:9 375:13 384:11,16 399:2 404:20 409:4 432:21 433:15 437:25 459:1,5 479:7 504:17,18 508:20 520:21 521:7 submitting 393:21 subpoena 232:12 416:20 subscribed 286:21 324:21 534:21 subsequent 397:12 substance 269:12 271:8 337:5 338:19,22 339:11 339:15,17 340:1 340:13 394:19 407:15 substantive 426:4 sued 363:9,15 sufficient 422:16 455:9 486:3 502:7
---	---	--	---

[sufficient - testified]

503:10 suggest 379:22 439:25 suggested 355:14 414:20 472:23 526:20 suggestion 480:20 481:9 suggestions 448:4 suggests 376:22 400:12 suite 233:18 234:5 280:20 281:5 312:20 313:6 supervisor 333:20 343:12 supervisors 356:24 supervisory 487:25 488:4,8,11 488:17 supplemental 231:5 260:17 261:12 353:16 supplying 523:3 support 327:14 475:8 supported 327:21 473:15 supposed 376:11 378:10 523:15 sure 238:16 239:2 246:3 250:7 252:23 258:6 261:22 273:13 275:23 276:17 282:24 283:19 290:9 297:4 305:24 306:20 325:9 327:12,20 329:1 333:9 335:4	344:12 368:21 377:9 391:18 396:9 438:13 441:10 451:15 460:2 461:11 465:21 483:16 491:13 514:11 surgery 497:19 surrounding 494:8 surveillance 294:23 295:1,5,8 296:11 surveilling 295:22 suspect 362:8 395:17 396:2 401:8 suspected 362:12 362:25 396:4 405:8 suspects 400:14,16 401:16 suspicious 349:17 swear 236:3 sworn 233:8 236:6 280:9 286:7 312:9 324:7 534:7 system 331:14,18 353:13 421:6 424:25 498:2	402:22 405:17 421:14 432:18 434:16 440:22 445:3 465:7 476:22,24 477:25 481:15 492:3 494:22 498:19 506:13 517:13 518:9,15 529:16 taken 229:19 236:13 278:18 286:9,10 310:18 324:9,10 328:4 330:25 331:4,19 331:21 344:18 350:1,3,8 475:14 534:9,10 takes 247:17 496:1 talk 239:9 242:21 251:25 256:18 283:10 304:13 342:18,21 344:8 344:12 395:24 407:20 433:10 450:23 497:22,24 498:3 talked 239:25 240:10 270:20 344:8 371:14 408:19 409:21 439:7 461:22 467:23 talking 252:13 317:17 326:3 328:19 359:2 360:18 369:5 388:14 411:15 432:1 442:11 488:8 518:24 530:4	talks 453:5 528:2 team 366:1,5,7,9 380:22 381:3,11 484:3 teardown 374:25 375:1 technical 263:21 319:18 322:1 361:2 technically 387:25 ted 234:19 235:11 281:19 313:21 telephone 382:1 telephonic 249:8 tell 238:12 289:11 343:14 353:8,21 399:4 407:3 442:1 444:1,20 445:10 449:18 511:7 telling 394:17 temporarily 359:19 temporary 424:24 ten 513:4 tenor 326:21 tent 424:22,23 tenure 293:7 term 316:4 317:10 484:23 terminate 478:4 terms 256:18 305:17 329:2 447:17 tesla 491:25 test 231:9 testified 236:7 241:18 245:23 247:13 282:3 357:17 384:8 461:21 471:5 479:13 480:23
	t		
	t 231:1 232:1 311:10 tag 248:8 take 237:3 249:9 276:15 292:16 319:6 327:25 331:6 335:13 344:17 359:10 367:5 373:1 375:23 391:15		

[testified - today]

519:22 testify 357:10,14 384:14 422:11 testifying 236:21 testimony 285:6 309:2 314:13,16 323:6 339:1 390:7 394:12 459:19 479:22 528:23 533:6 text 269:24 270:3 270:8 283:11,20 284:3 texts 270:3 thank 249:11 260:23 276:18 346:9,9 361:5 532:6,12 thing 245:19 259:15 302:22 307:11,19,21,24 308:6 422:5 430:17 527:6 things 239:6 241:11,25 257:1,9 259:13 305:20 358:22 387:13 388:13 390:18 427:7 439:1 480:21 485:19 486:12 487:2,11 think 241:18 242:12 245:23 247:13 249:6 251:13 267:25 304:6 307:11 319:17 320:16 322:3 328:1 335:4 337:1 338:12 361:23 383:22 398:2 404:8	410:10 472:19 477:7 484:14 524:18 527:17 529:6,18 532:2 thinking 422:5 third 273:14,20 274:11 314:21 317:24 395:24 396:7 397:16 400:3 437:7 447:21 458:4 497:5 thirdly 442:16 thirds 501:18 thoroughfare 244:9 thought 459:19 thoughts 404:21 thousands 292:21 315:16 thread 365:19 394:4,6 412:3,5,9 threat 293:4 threaten 293:18 threatening 293:22,24 294:6,9 three 270:15,24 271:2 272:5 275:5 277:8 332:2,4,8 341:7 365:7 385:12 499:22,23 till 348:19 time 235:2,2 236:16 238:20,23 239:25 240:19 241:9,14,15,15,23 241:25 242:6,7,9 242:11,18 247:10 247:17 249:13,16 255:7 256:5,15,16 257:2,17 259:7	268:22 270:20 276:20,23 286:8 286:10 287:19 288:20 289:17,19 290:15 292:8 294:25,25 295:6 295:19 296:15,24 297:2 298:21,24 299:12 300:21 301:20 302:14 304:22 305:5 315:11,22 316:2,8 316:20 319:11,14 320:10 324:8,10 326:8 328:3,6,24 330:11,17,19 331:21 337:11 340:17,17 341:15 341:24 342:4 346:4,4 347:11 348:5,7,10,23 349:1 350:2,3 352:19,19 355:7 359:12,15,21,22 361:18 362:7,12 363:14,18 368:16 368:17,22 369:9 371:14 376:17,23 378:10,18 379:8 380:13,14 384:8 387:3,22 388:5,8 388:12,14,23 389:13,17 392:1,5 392:8 393:6 394:9 395:23 396:5,15 397:15 400:5 401:21 402:23 403:1,4,10,13,14 406:20 408:2 410:10 412:24 414:15,20 415:5	425:1 426:21,22 427:1 428:19 434:18,21,24 435:2 436:1,24 438:5,10,16 439:4 439:8,10,12,14,15 440:14,19 441:17 441:20 442:24 443:12 444:7 445:9,13,14,25 446:2,15 447:17 448:1,4 450:10 459:24 462:25 463:21 465:16 475:18 476:10,23 477:2,13,20,21,25 478:2,10,13 480:1 480:18 482:7,19 483:2,12,18 485:17 495:20 496:13 497:15,18 506:13 518:10,19 518:22 522:16 529:6,20,23 532:5 532:8 534:8,10 timeline 247:12 257:10 times 237:9 293:6 295:14 320:4,9,13 347:2 357:6 392:7 403:15,16 443:17 496:12 501:24 517:8 522:15 timing 382:7 401:25 474:8 timothy 314:23 tmaster 234:8 281:8 313:9 today 235:13 237:21 254:11 255:18 256:2
--	--	--	--

[today - understand]

<p>293:4 294:1,13 300:10 320:3 326:7 335:1 345:13 383:9 388:23 406:25 407:19 410:9 414:8,12 429:2 452:16 461:21 473:25 478:2 493:16 520:14 531:13 today's 237:1 todd 234:3 235:21 237:8 263:3 281:3 313:4 531:22 toews 483:16,16 497:16 498:15 501:14,23 502:11 502:25 504:10 505:11,25 507:17 told 262:4,15,18 262:22 268:16 303:11 326:25 394:8,18 407:14 442:7,25 445:14 445:25 446:5 461:7,24,25 tone 294:7,9 top 303:23 314:20 375:7 414:13 435:23 502:1 total 477:19,23 482:13 totality 335:9 405:12 totally 301:25 touchy 302:21 303:16 track 498:23 traditional 469:7 469:16</p>	<p>traffic 239:6 243:2 243:7 244:5,9,10 244:12,18 245:3,4 245:5,11,14 256:25 424:20 450:13,14 485:20 485:25 486:4,12 486:15,18,20 489:3 499:23 500:8,9,10,16 503:18,19,21,22 504:1,1,12,14,19 505:1 515:19 516:7,13 517:2,5 518:2 522:7 training 341:10 transcribed 286:13 324:13 534:13 transcript 277:15 284:14 286:14,17 286:18 309:21 322:12 324:14,17 324:18 532:11 534:14,18,18 transcription 285:6 323:6 533:5 transcripts 237:24 238:5,7,9 transit 276:9 transited 276:5 transiting 275:25 transportation 244:20 469:19 traveled 469:24 treated 448:19 450:20 459:7 treating 449:3 tresmontan 296:13 385:20 416:23,25 417:9</p>	<p>418:4 trespass 302:16 tried 377:22 378:2 truck 509:23 true 285:5 286:14 292:1 323:5 324:14 369:9 429:1 468:16 475:5 528:20 533:5 534:14 try 257:12,16 258:4,14 319:7 320:22 321:10,12 321:21 439:2 452:22 477:5,18 478:1 trying 256:21 257:5,22 259:4 318:10 322:1 325:14 326:10 340:23 363:16 364:21 391:19 392:20 428:22,25 498:23 ts 321:16 turn 261:1 325:13 330:20 423:2 444:15 twice 320:17,17 two 248:24 249:9 298:10,23 301:10 314:10 321:16 337:22 341:7 355:17 358:22 361:3 394:24 420:11 423:14 426:5,5 441:11 447:4 457:19 477:23 481:19 501:18 508:7 509:17 514:7</p>	<p>516:3 517:3 518:8 518:16 529:17 type 247:3,8 252:4 318:3 349:3,10,15 349:16,21 350:15 350:20,24 351:9 351:13,16 352:2 352:15 427:6 454:3 486:20 528:11 types 291:23 349:9 349:11 522:10,11 523:2 typewriting 286:13 324:13 534:13 typical 257:7 351:1 409:25 425:13 431:4</p>
			u
			<p>u 330:19 ultimate 356:8 450:25 473:17 ultimately 433:4 unaware 301:25 underage 401:18 undersigned 285:3 323:3 533:3 understand 236:18,21 258:25 277:1 331:14 338:19,22 339:12 339:15,17 357:19 357:22 364:21,24 390:1 391:12 392:19 421:25 448:21 479:21,22 485:11 486:9 488:7 494:2 503:12 520:25 526:4,24</p>

[understanding - violation]

understanding 254:3,17 255:9 259:7 261:23 262:3 265:7 266:15,16 267:13 267:19 268:12 269:3 290:17 296:12 301:21 302:19,20 326:13 327:11 340:16 350:23 355:3 356:12 389:12 401:14 404:7 405:1 425:7 460:12 465:17 493:8 494:6 513:1 515:11 516:19 526:15 531:6 understood 348:21 unfamiliar 268:23 unintelligible 389:24 390:25 391:9 unit 235:4 347:2 united 229:1 235:7 275:9 278:1 310:1 unloaded 264:3,23 267:5 268:15 288:6 289:16 293:8 305:6 361:12 unquote 388:6 476:13 unsafe 469:8 unsure 361:15 unusual 520:6 unwritten 242:10 370:21 428:14 430:16 483:1,3 524:1 525:10	528:14,19 update 417:13 423:5 updated 367:16 368:20 updating 418:2 upheld 479:3,8 uphold 473:18,23 475:4,9,21 upholding 466:14 466:16 474:25 upload 331:15 494:23 uploaded 330:22 478:15 496:20 uploading 309:12 use 249:20 263:23 267:17 408:18 434:21 445:15,16 477:20 487:25 488:5 507:22 518:16 523:20 527:3 uses 467:23 v vague 240:25 243:8,17 250:17 263:18 264:6 266:7 267:8 288:19 297:10 305:21 306:9 307:3,14,23 308:17 327:16 337:8 338:10 339:19 342:2 364:2 369:17 370:4 372:2 378:25 379:10 382:9 389:25 390:24 391:9 410:2 412:23	413:17 415:21 428:7,25 430:5 443:15 446:9 451:2,20 455:12 463:12 464:11 467:15 474:14 484:10,22 486:5 487:18 492:15 506:8 520:22 valley 407:23 510:2 511:15 512:15 van 513:9 various 240:11 254:15 290:12 298:14 395:16 402:3 406:10,21 409:22 497:9 vary 247:8 vehicle 467:18 468:8 469:5,20 vehicular 503:21 503:25 504:14 venture 406:14 verbally 511:22 verbatim 338:13 423:23 verification 261:2 verified 493:19 verify 271:21 veritext 234:20 235:10,12,14 281:20 313:22 447:6 version 351:22 367:15 385:6 versus 337:19 525:25 528:10 viability 404:21 vicinity 513:11	victim 398:13 401:17 473:3,3 video 235:3,9 329:8 424:23 522:23 videoconference 229:16 233:6 278:14 280:7 286:6 310:14 312:7 324:6 534:6 videographer 234:19 235:1,12 236:2,8 249:12,15 276:19,22 281:19 313:21 319:10,13 328:2,5 359:11,14 402:25 403:3 434:23 435:1 477:3,8,12,16 478:9,12 518:18 518:21 529:19,22 532:7 videotaped 229:15 233:1 278:13 280:1 310:13 312:1 view 308:14,23 340:16 380:23 399:9 403:25 404:9,25 421:20 422:20 423:25 429:5 450:19 473:14 476:5 509:14 511:16 522:10 527:6 violated 473:5 violates 237:13 violating 274:12 violation 336:20 336:24 337:5 350:18 355:20
--	--	---	--

[violation - witness]

<p>356:14 violations 467:18 467:19 violence 275:24 violent 275:10,15 293:16 voice 235:15 328:18 329:7,9,10 329:12 336:16,17 336:23 338:5 voices 329:15 332:11 336:14 337:22,25 volume 229:17 235:4 245:5 278:15 297:7 310:15 vs 229:6 235:6 278:6 310:6</p>	<p>521:10,17 522:23 528:10 wants 393:5,5 456:9 505:15 warrants 462:13 watch 355:9 456:12 way 254:24 259:3 293:22,24 300:8 302:18 314:22 322:1 352:1 353:8 353:19,21 375:20 384:21 401:24 409:25 413:16 414:7 421:5,8,19 423:22 439:22 441:25 455:21,22 457:22 468:17 484:6 497:5 501:18 505:17 524:10,23 525:24 530:18 ways 420:20 430:9 480:10,15,15 we've 269:23 275:8 276:14 300:16 332:7 336:12 359:2 365:18 370:8 385:11 402:21 419:21 434:15 472:16 476:21 477:3 489:14 490:17 506:25 509:18 514:7,10 518:5 weapon 289:2,5 332:23 333:4 338:16,17,24,24 340:18,24 341:3 341:24 342:16</p>	<p>357:23 358:14,16 362:16 525:20 527:6,24 528:3,7 weapons 266:20 266:20,20 292:17 292:20,22,25 293:8 302:13,24 315:16 332:22 350:18 408:1 429:4 526:16,21 527:20,21 wearing 356:5 website 366:24 367:2 368:21 407:2 wedding 456:10 456:18 week 298:23 weeks 486:23 497:19 welfare 317:17 went 240:18 264:20 265:19 364:21 372:18 395:4 406:24 431:17 492:8 whatsoever 358:4 511:24 525:25 whereabouts 295:11 whereof 286:20 324:20 534:20 white 270:14 272:15,16,17 277:8 william 412:13 willingness 414:15 wish 305:8 430:21 wished 300:1 301:2 433:20 464:4</p>	<p>wishes 460:8 witness 233:7,9 235:22 236:3,6 238:16 239:13 241:3,6 243:20 247:25 248:2 250:20 261:15 262:6 263:20 264:10 266:10 267:13 272:2 280:8,9 282:2 286:7,20 288:23 297:12 305:24 306:11,14 307:6 307:17 308:2,10 308:21 309:4 312:8,9 314:6 316:2,17 317:10 324:7,20 327:19 329:3 337:18 338:12 339:6 340:7,22 342:5 345:23 346:1 358:21 359:7 364:5 365:19 369:21 370:7 374:16 376:4 378:15 379:3,13 387:24 388:12 390:1,9 391:1,10 392:7 401:6 404:16 405:7 410:4 411:19 413:1,19,24 414:3 416:7,17 424:9 428:11 430:8 443:20 444:8 446:12 447:12 448:23 449:1 451:5,24 455:14 460:22 463:15</p>
<p>w</p>			
<p>w 234:12 281:12 313:13 wagstaffe 395:19 waiting 411:16 waive 359:22 want 238:17 241:24 242:16 261:16 282:17 328:22 329:1 337:9 388:4 395:24 424:2 428:18 437:7 492:18 506:25 518:10 519:8,14 532:10 wanted 333:8 359:17 432:10 454:8 456:9,13,22 462:1 486:23 492:19,20 520:11 520:12,16 521:9</p>			

[witness - zeleny]

464:14 466:19 467:17 471:22 474:17 476:11 484:14,25 486:9 487:20 491:16 492:18 494:12 496:14,25 503:13 505:4 506:12 517:1 519:17 520:25 522:18 524:14 525:3 527:14 528:25 530:4 531:13 532:1 534:7,20 witnesses 238:1,11 238:16 woman 268:1 328:19 word 296:18 words 290:9 301:2 339:8 342:9 399:8 399:9 429:14,22 446:1 454:8 488:9 work 237:14 241:24 272:9,24 275:3 298:23 321:10,12 322:4 341:5 356:19 367:25 432:6 452:3 497:20 499:21 works 244:20,21 251:16,16 452:4 469:19 483:10,14 500:19 504:22 wrapped 529:18 write 334:10 386:1 399:9 401:19 430:10 writes 426:8 427:10 509:10,11	writing 353:12 396:15 462:15 484:3 written 240:7,11 240:16,20,23 242:8,22 246:12 246:23 357:2 369:25 370:21 378:9 379:22 383:19,19 386:12 388:15,21,24 416:1 424:14,17 426:13,20,23 428:14 430:15 432:24 451:10,15 453:9 460:9 463:5 463:22 467:13 469:3,9,12 477:15 481:22 482:2,6,14 482:23 502:19,23 508:2 519:4,22 523:9,25,25 525:7 528:13,19 wrote 304:6 386:6 386:20 404:13 427:22 511:23	423:13 459:9 491:16 510:15 518:7 year 236:13,14 237:25 245:24 270:12 527:8 years 293:12,15 316:9 341:7 361:25 362:5,5,25 363:8 403:8,9 407:19 yep 510:19	315:23 316:11 317:3 318:11,25 319:20,23 320:7 320:15,20 321:3 326:19 327:2,10 329:16 332:21 334:10 341:23 342:15 346:18,23 355:20 356:5,13 357:19 358:1,5,8 358:24 360:19 361:7,11,19 362:1 362:8,13,17,22 363:15,19,25 364:6,8,11,12,19 366:19 369:9 370:15 372:1 373:7,20,24 374:5 374:11 377:11,15 377:19,23 378:3 378:23 379:6 381:4,7,15,21,25 382:12,16,20 383:1,8,20,23 384:16 386:12 387:10 389:15,19 390:10,22 391:4 392:15 393:7,13 393:21 394:2,24 395:3,17 396:4,25 397:9,13,18 401:24 402:18 404:1 407:9,17 408:1 409:13 413:11 414:10,14 415:4,10 417:1,25 418:19,23 419:23 419:25 420:8,20 421:1,19 422:21 423:19 424:2 428:19 429:25
		z	
		zeleny 229:4 234:22 235:6,18 235:20 236:1 254:14 259:17,24 264:2,22 266:24 266:25 267:3 269:1,7 270:17,18 270:21,25 271:11 272:5,8,13,22 273:3 277:9 278:4 281:22 283:2,4,5 283:10,18 288:10 289:7,15 290:12 290:14 292:9,12 292:18,23 293:6 293:15 294:10,18 294:23 295:2,5,14 295:18,25 296:11 296:15,22,25 297:6 298:14 299:14 300:1,13 300:17,22 301:2 301:25 302:10,23 304:11,16,23 305:1 306:7,17 307:1,13,22 308:7 308:16,24 310:4 313:24 315:1,9,12	
	x		
	x 230:1 231:1 232:1 279:1 311:1 311:10 xavier 234:11 235:24 281:11 313:12		
	y		
	y 332:15 yeah 236:4 268:5 272:2 316:17 322:3 329:25 330:17 338:6 343:9 402:23		

[zeleny - zoom]

431:12 436:15,21	302:3,5 326:5,11	
437:2,13,17,22	343:10 345:11	
438:4,10,21,23	354:13 357:10	
439:5,17 440:1,10	358:24 360:12	
440:11 441:5,17	367:3 368:3,18	
441:20 442:1,7,25	369:16 372:8,14	
443:10,23 444:1	373:3 374:7 377:5	
444:10,21 445:5	382:6 383:13	
445:10,14,19,25	384:14 386:8	
446:5 447:15	391:22 393:25	
448:1,5 450:15	396:14 406:7,11	
452:13,19,22	406:21 407:21	
458:6,15 459:5,6	408:22,25 409:9	
460:8,15,22 461:8	412:17,22 413:25	
462:1 466:2,18	414:21 417:10,22	
470:21 471:7	419:1 422:3,11	
472:21 473:14,22	427:19 433:8	
474:11 475:23,25	435:21 436:3	
476:6,12 479:7,10	437:4 438:17	
479:18,23 480:2	439:13 441:3,19	
480:16,20 481:6	448:15,19 450:4	
481:11 482:7,19	454:22 458:22	
483:13,19 492:14	465:18 467:5	
493:24 501:10,14	471:11 472:11	
502:2,16,22	474:6 475:21	
505:10 507:9,21	478:24 479:4	
508:16,23 509:20	497:10,17,24	
511:21,21 512:13	498:4,9 499:13	
515:23 517:23	502:12 503:24	
519:2 520:21	504:5 505:19	
521:5,9 522:22	507:12 509:16	
523:19 524:9	511:17 516:20	
526:19 527:24	520:10,19 524:24	
528:9,15 530:14	526:12 527:18	
530:16,23 531:1	530:1 531:7	
531:19	zero 328:24 329:5	
zeleny's 254:9	zoom 233:15,16	
268:20 288:15	234:3,12,19,22	
289:13,25 295:11	280:17,18 281:3	
296:5 297:21	281:12,19,22	
298:4 300:5,9	312:17,18 313:4	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

Exhibit G

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3

4 -----
5 MICHAEL ZELENY, an individual,)

6 Plaintiff,)

7 vs.)

Case No.:

) CV 17-7357 JS

8 EDMUND G. BROWN, JR., an)
individual, in his official)
9 capacity; XAVIER BECERRA, an)
individual, in his official)
10 capacity; CITY OF MENLO PARK,)
a municipal corporation; and)
11 DAVE BERTINI, an individual,)
in his official capacity,)

12 Defendants.)
13 -----)

14
15
16 VIDEOTAPED DEPOSITION OF MATTHEW L. MILDE
17 San Francisco, California
18 Thursday, March 5, 2020
19 Volume I
20

21 Reported by:

CHRIS TE SELLE

22 CSR No. 10836

23 Job No. 3985719
24

25 PAGES 1 - 217

1 Q. Do you remember the date of that letter? 10:54:50
2 A. No.
3 Q. Do you remember if it was the denial of
4 the initial application, or the appeal?
5 A. I can't say. 10:55:02
6 Q. Do you think you will recognize that
7 e-mail when I show it to you?
8 A. Yes.
9 Q. Did you see any other documents, other
10 than the e-mail that you just described? 10:55:16
11 A. Not that I can remember.
12 Q. Were there any other documents on the
13 table in front of you?
14 A. Yes.
15 Q. Can you recall any of those documents more 10:55:41
16 specifically?
17 A. I cannot.
18 Q. How long have we been on record so far?
19 THE VIDEOGRAPHER: 52 minutes.
20 MR. MARKEVITCH: Do you need a break? 10:56:13
21 MR. MASTER: I'm okay. Are you okay?
22 THE WITNESS: I'm okay.
23 BY MR. MARKEVITCH:
24 Q. Let's keep going then.
25 Are you familiar with the special 10:56:24

1 permitting process at the City of Menlo Park? 10:56:26

2 A. Yes.

3 Q. When was that process put in place?

4 A. I'm unsure. I'm unsure exactly.

5 Q. Was it in existence before you started 10:56:43

6 working for the City of Menlo Park?

7 A. No.

8 Q. Did you participate in the creation of the

9 special permitting process at the City of Menlo

10 Park? 10:57:11

11 A. Yes.

12 Q. What was your role in that regard?

13 A. I sat on a committee of city staff,

14 provided my perspective on community

15 services-related needs, questions, and assisted with 10:57:57

16 how the process would be formulated.

17 Q. What was the name of that committee?

18 A. I don't recall it had a name.

19 Q. Was that committee created specifically

20 for putting together a special permitting process? 10:58:27

21 A. I believe it was.

22 Q. Did that committee still exist when you

23 left the City of Menlo Park?

24 A. Not in the form that it was in.

25 Q. In what form did it exist? 10:58:54

A. That committee was specific to the
creation of the permit process itself.

3 Q. Once the process was designed, was the
4 committee terminated?

5 A. That committee, yes. 10:59:18

6 Q. Was there a new committee formed?

7	A.	Yes.
---	----	------

8 Q. What was the name of the new committee?

9 A. Special event permit committee.

10 Q. What was the purpose of that committee? 10:59:31

11 A. Those were individuals who represented
12 various departments in the city who could be the
13 liaison of their department to assist in the
14 approval of special event permits.

15 Q. Was the police department one of the 10:59:51
16 departments involved in the committee?

17 A. Yes.

18 Q. Who was the liaison for the police
19 department in, well, during the year when the
20 process was just created? 11:00:02

21 A. When it was created, it was Sergeant Susan
22 Kaufman.

23 Q. Is there any way you can identify the year
24 when the, when this process was created?

25 | A. I cannot. 11:00:17

1 Q. Was it 2013? 11:00:18
2 A. I can't say for sure.
3 Q. When you were leaving the City of Menlo
4 Park, who was the liaison for the police department?
5 A. Sergeant Scott Mackdanz. 11:00:43
6 Q. Were there any other individuals who acted
7 as liaisons between the time of Ms. Kaufman's tenure
8 and, I'm sorry, what was the last name of the
9 sergeant?
10 A. Sergeant Mackdanz. 11:00:57
11 Q. And Sergeant Mackdanz's tenure?
12 A. Yes.
13 Q. Who?
14 A. Sergeant Matt Ortega.
15 Q. Anybody else? 11:01:08
16 A. No.
17 Q. Was commander at the time Chief Bertini,
18 am I correct, was a commander?
19 A. At that time, it was Commander Bertini.
20 Q. Was he ever a liaison for the police 11:01:25
21 department with regard to the special permitting
22 process?
23 A. Not directly.
24 Q. What do you mean?
25 A. If a committee member was not present or 11:01:36

1 on vacation, other members of the department would 11:01:41
2 fill in as the department representative, and I
3 recall times that Commander Bertini would take those
4 responsibilities.

5 Q. Were those, were those needs-based 11:02:02
6 temporary circumstances?

7 A. Yes.

8 Q. Can you think of any circumstances where
9 Commander, or, as a chief, Bertini, took over the
10 special permitting process on behalf of the police 11:02:15
11 department?

12 A. No.

13 Q. Do you know what the role of, I'm going to
14 just call him Chief Bertini, because that's his
15 position today; is that correct? 11:02:31

16 A. I believe so, yes.

17 Q. What was the role of Chief Bertini in the
18 review of Mr. Zeleny's permit application?

19 A. I can't say exactly, but my understanding
20 at the time was that he was one of the primary 11:02:53
21 individuals formulating the city's response to Mr.
22 Zeleny's request.

23 Q. Why was he the one involved in the
24 process, rather than the liaison who was in the
25 position of a liaison at the time? 11:03:17

1 MR. MASTER: Objection. Lacks foundation. 11:03:20
2 Calls for speculation. If you know, you can answer.
3 THE WITNESS: Can you repeat the question.
4 MR. MARKEVITCH: Could you read the question,
5 please. 11:03:26
6 (The pending question was read.)
7 THE WITNESS: I don't know.
8 BY MR. MARKEVITCH:
9 Q. Who was the liaison at the time? Let me
10 just specify; at the time when Mr. Zeleny's permit, 11:03:58
11 special permit application was pending.
12 A. Sergeant Matt Ortega.
13 Q. What about, was it Sergeant Kaufman?
14 Sergeant Kaufman, is that --
15 A. Sergeant Kaufman. 11:04:17
16 Q. Was Sergeant Kaufman involved, or no?
17 A. Not that I recall.
18 Q. So, she was not a liaison at the time?
19 A. I don't believe so, not to my knowledge.
20 Q. Was Sergeant Ortega on vacation during the 11:04:29
21 entire time of Mr. Zeleny's special permit
22 application review?
23 MR. MASTER: Objection. Lacks foundation.
24 Calls for speculation. If you know.
25 THE WITNESS: I couldn't say. 11:04:42

1 BY MR. MARKEVITCH: 11:04:44

2 Q. Is it your testimony that he could have

3 been?

4 MR. MASTER: Same objection. You can answer,

5 if you can. 11:04:52

6 THE WITNESS: It's likely that he was not on

7 vacation the entire time.

8 BY MR. MARKEVITCH:

9 Q. So, why was Chief Bertini reviewing the

10 application, rather than Sergeant Ortega? 11:05:01

11 MR. MASTER: Objection. Asked and answered.

12 Argumentative. If you know.

13 THE WITNESS: I don't know.

14 BY MR. MARKEVITCH:

15 Q. Did you ever ask? 11:05:10

16 A. No.

17 Q. Did that question ever cross your mind?

18 A. No.

19 Q. Were you ever told why Chief Bertini was

20 involved in the process of reviewing Mr. Zeleny's 11:05:21

21 special permit application?

22 MR. MASTER: I will just assert an objection to

23 the extent that you received any communications from

24 the city attorney's office related to that topic,

25 instruct you not to answer. Obviously, if you heard 11:05:39

1 flowchart? 11:35:39

2 A. Not that I believe.

3 Q. Do you have any knowledge of him doing

4 that?

5 A. No. 11:35:49

6 Q. Do you know if the flowchart was ever

7 reviewed by the legal counsel for the city?

8 A. Not to my knowledge.

9 Q. Who made the final version of the first

10 iteration of the flowchart? 11:36:09

11 A. I did.

12 Q. Do you remember what year it was in?

13 A. No.

14 Q. Do you remember who decided to deny,

15 initially, Mr. Zeleny's application for a special 11:36:45

16 event permit?

17 A. I'm sorry, can you repeat the question

18 there.

19 (The pending question was read.)

20 THE WITNESS: I don't recall. 11:37:16

21 BY MR. MARKEVITCH:

22 Q. Do you remember how you came to find out

23 that the permit is being, the permit application is

24 being denied?

25 A. I recall a conversation I had over the 11:37:34

1 phone with Chief Bertini, who said that he had 11:37:38
2 discussed the city's response with the city's legal
3 counsel, and city manager, and that he would be
4 sending me a written response.

5 Q. Did Chief Bertini tell you who 11:38:12
6 participated, participated in that decision to deny
7 the permit?

8 A. Not specifically that I can recall at this
9 time.

10 Q. Do you remember what your understanding 11:38:25
11 was as to who would have been the individuals
12 involved in that process?

13 MR. MASTER: Lacks foundation. Calls for
14 speculation. If he has personal knowledge, then he
15 can answer. 11:38:41

16 Go ahead. Sorry.

17 THE WITNESS: Not entirely.

18 BY MR. MARKEVITCH:

19 Q. Okay. Well, do you have an understanding,
20 well, do you have a recollection of having an 11:38:50
21 understanding in any part of who was involved in the
22 process with Chief Bertini?

23 A. It was my understanding at the time that
24 it was Chief Bertini, Alex McIntyre, and the city
25 attorney's office. If there were others involved, I 11:39:12

1 MR. MASTER: Object. Vague and ambiguous. 12:09:57
2 Overbroad. You can answer.

3 THE WITNESS: I don't remember if I did or not.
4 BY MR. MARKEVITCH:

5 Q. Now, logistically, did you have access to 12:10:03
6 whatever portal there was to actually post
7 information on the website?

8 A. Yes.

9 Q. So, if you needed to post something, you
10 would do it yourself? 12:10:14

11 A. Yes.

12 Q. You didn't have to go to IT and ask them
13 to do it.

14 A. No. No. I believe I was always a
15 publisher of the website. 12:10:35

16 Q. Let's go back to Exhibit 91, please.

17 Is this, does this flowchart represent the
18 general process for special event permit
19 application, as it exists today?

20 MR. MASTER: I'm just going to object. Lacks 12:11:16
21 foundation, calls for speculation, as of today.
22 He's no longer with the city.

23 MR. MARKEVITCH: Thank you.

24 BY MR. MARKEVITCH:

25 Q. As it existed as of the time when you left 12:11:22

1) the City of Menlo Park. 12:11:24

2) A. Generally, yes.

3) Q. Okay. When you say, generally, could you

4) specify why you are qualifying your answer.

5) A. Yes. The first thing that jumps to my 12:11:39

6) mind is the days indicated is not necessarily set.

7) It was general. Depending on the complexity of the

8) application, it might have been reviewed by our --

9) I'm only speculating.

10) MR. MASTER: Don't. You're not speculating. 12:12:14

11) BY MR. MARKEVITCH:

12) Q. So, let's look at step A, initial contact.

13) It looks like in this step you, at least

14) at the time of this flowchart, you would send the

15) application to the applicant in response to, I 12:12:41

16) presume, an inquiry, correct?

17) A. That's correct.

18) Q. Would you then at that time speak with the

19) applicant?

20) A. Not always. 12:13:00

21) Q. Under what circumstances would you speak

22) to an applicant?

23) A. If they called me on the phone.

24) Q. And can you generalize what kind of

25) questions applicants would ask at that point, if you 12:13:43

1 looking for in terms of the detailing of an event on 12:16:22
2 a map.

3 A. The special event permit application
4 included a checklist that the applicant needed to
5 identify certain features, such as tents, road 12:16:35
6 closures, first aid stations, and the like.

7 It was, I would look to make sure that
8 that information was complete to the event. I
9 would, if the applicant included that they had a
10 road closure, I would look to see if it was on a 12:17:05
11 primary response route or not, and where the
12 location of the closure was.

13 Q. Anything else?

14 A. I would confirm that the map was clear, so
15 that when it was photocopied and sent to the permit 12:17:34
16 committee, it was legible.

17 Q. Anything else?

18 A. That's all I can recall.

19 Q. Now, if there were any deficiencies in the
20 application, what would you do, generally? 12:17:47

21 MR. MASTER: Objection. Vague and ambiguous.
22 Overbroad. Go ahead.

23 THE WITNESS: Generally, I would contact the
24 event permit organizer and detail a listing of the
25 items that they needed to exchange or modify or 12:18:08

1 include, depending on the event permit, and have 12:18:13
2 them resubmit.

3 BY MR. MARKEVITCH:

4 Q. And then what would happen?

5 MR. MASTER: Same objections. Go ahead. 12:18:28

6 THE WITNESS: That depended on the person, the
7 applicant, whether or not they wanted to resubmit or
8 not.

9 BY MR. MARKEVITCH:

10 Q. If they resubmitted, what would you do 12:18:38
11 with that application?

12 A. Follow the same process by providing an
13 initial review of the application.

14 Q. And if you found the application to be
15 complete to your satisfaction, what would you do 12:19:02
16 next?

17 A. I would scan the documents and forward
18 them to our permit committee.

19 Q. Now, you were part of the permit committee
20 that would then again review the application for 12:19:27
21 substance, correct?

22 A. That's correct.

23 Q. So now we're talking about step C, staff
24 internal review, correct?

25 A. That's correct. 12:19:38

1 know if I could provide an estimate. It was a lot. 12:24:24

2 Q. Well, it's up to 100 every year, so,

3 potentially, up to 600, am I correct?

4 A. Potentially, yes.

5 Q. So, during your tenure at Menlo Park, can 12:24:58

6 you estimate how many applications, you know, took

7 more than a month to review, at the initial stage?

8 A. Repeat the question.

9 (The pending question was read.)

10 THE WITNESS: I can't recall for a number. 12:25:33

11 BY MR. MARKEVITCH:

12 Q. Were there any applications that took more

13 than one month to review at the initial stage, where

14 that is estimated to be at three days?

15 A. I couldn't recall. 12:25:45

16 Q. Now, other than the reasons that you've

17 stated where you would have been away, or, perhaps,

18 busy, can you think of any other reasons why the,

19 the step B would take more than three days?

20 A. I can only speculate. I can't say for 12:26:26

21 sure.

22 Q. Once an application is forwarded to staff

23 for internal review, is it fair to say that it has

24 been deemed complete and has now been submitted for

25 assessment? 12:26:56

1	A.	No.	12:26:56
---	----	-----	----------

2 Q. Why not?

3 A. Because my role was that, at that stage,
4 an administrative one, I rely on the committee to be
5 the primary source of soaking in the information 12:27:12
6 pertaining to their department and providing
7 feedback, comment, approval, denial of the permit.

8 Q. But, once the committee is looking at the
9 application, it has already been deemed, in quotes,
10 complete, as that terminology is used in steps A and 12:27:35
11 B, am I correct?

12 MR. MASTER: Where is that? I will just say
13 it's been asked and answered. Vague and ambiguous.

14 Go ahead, you can answer.

15 THE WITNESS: I wouldn't consider it complete, 12:27:52
16 no.

17 BY MR. MARKEVITCH:

18 Q. So, how often would you take an incomplete
19 application and pass it on to the staff internal
20 review step? 12:28:03

21 A. I would say that all applications I
22 submitted to the internal review staff were
23 incomplete.

24 Q. Now, if you look at step A and step B, it

25 tells us that the incomplete applications revert 12:28:23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A F T E R N O O N S E S S I O N

(1:08 p.m.)

THE VIDEOGRAPHER: We're back on the record.

The time is 1:08. 01:08:51

MATTHEW L. MILDE,
having previously stated to tell the truth under
penalty of perjury, was examined and testified
further as follows:

EXAMINATION (Cont'd)

BY MR. MARKEVITCH:

Q. Mr. Milde, looking at Exhibit number 91,
which is the flowchart for the special event permit, 01:09:04
I think it's time for us to move to step C, which is
staff internal review, and, in parentheses, it says,
10 days.

What is a staff internal review?

A. The staff of the permit committee would 01:09:32
receive a copy of the permit, and they would provide
me any input, questions, comments, conditional items
that the applicant needed to complete before we
issued a approve permit.

Q. What is the significance of these 10 days 01:10:05

1 A. I couldn't. We did so many, it would all 01:36:23
2 jumble together.

3 Q. Is there any one particular one that you
4 remember, for whatever reason?

5 MR. MASTER: Objection. Asked and answered. 01:36:35
6 Argumentative.

7 THE WITNESS: As I sit here today, I cannot.

8 BY MR. MARKEVITCH:

9 Q. Do you remember Mr. Zeleny's application?

10 A. Vaguely. 01:36:49

11 Q. Do you remember forwarding that
12 application to the committee?

13 A. I don't recall that I did.

14 Q. You don't think you forwarded that
15 application to the committee? 01:37:13

16 A. I don't remember if I did or not.

17 Q. Now, once an application is in the hands
18 of the police department, do you know what criteria
19 the police department applies to its review?

20 A. No. 01:37:28

21 Q. Once the application is in the hands of,
22 what does PW stand for again?

23 A. Public works.

24 Q. Once an application is in the hands of
25 public works maintenance, do you remember what 01:37:40

1 criteria they apply to deciding whether or not an 01:37:43
2 application should be approved or denied?
3 A. No.
4 Q. Same question for public works
5 engineering. 01:37:52
6 A. No.
7 Q. What about planning?
8 A. Can you repeat the question for planning.
9 Q. Once you send an application to planning,
10 do you know what criteria the planning department 01:38:11
11 would apply in reviewing that application?
12 A. I don't know for certain.
13 Q. Do you know if criteria exist that a
14 planning department would apply to review an
15 application? 01:38:31
16 MR. MASTER: Lacks foundation. Calls for
17 speculation.
18 If you know.
19 THE WITNESS: I know they would look at the
20 city ordinance, and, if there was amplified sound, 01:38:39
21 they'd take it to city counsel for approval.
22 BY MR. MARKEVITCH:
23 Q. How do you know that they look at the city
24 ordinance?
25 A. That would be the only way to take it to 01:38:59

1 Q. And do you know how the fire department 01:40:28
2 assessed whether or not it was appropriate to close
3 or not close certain roads?

4 MR. MASTER: To be clear, counsel, you are
5 referring to the fire department as the fire 01:40:36
6 district, just to be clear, so, just to make sure
7 we're on the same page. Go ahead.

8 MR. MARKEVITCH: Sure.

9 THE WITNESS: I do know that the fire district
10 was concerned with closures or events taking place 01:40:55
11 on primary response routes that are identified
12 routes in the city. That's all I'm aware.

13 BY MR. MARKEVITCH:

14 Q. Are you aware of any written policies or
15 lists of criteria that the fire department would use 01:41:18
16 specifically in the context of the special event
17 permit process?

18 A. The fire district, no.

19 Q. Going back to the police department, are
20 you aware of any specific written policies that the 01:41:35
21 police department would use in the context of
22 assessing the propriety of a special event permit
23 application?

24 A. No.

25 Q. Let's move on to the next page of 01:42:04

1 now. 01:57:50

2 (Exhibit 95 was marked for identification

3 by the court reporter and is attached hereto.)

4 BY MR. MARKEVITCH:

5 Q. This one is going to be 95. Mr. Milde, 01:58:11

6 please review this document and let me know if you

7 are familiar with it.

8 A. It is my understanding that this is the

9 e-mail Mr. Zeleny sent to a number of people, I

10 believe, myself included, with his request for a 01:59:12

11 special event.

12 Q. For the record, the first page is marked

13 as MP000234, and it ends on MP000240.

14 A. Correct.

15 Q. Mr. Milde, is this an application for a 01:59:51

16 special event permit submitted by Mr. Zeleny to the

17 City of Menlo Park?

18 A. It appears to be.

19 Q. Was this application sent to you?

20 A. It was. 02:00:10

21 Q. Did you perform an initial review of this

22 application pursuant to step B of the flowchart?

23 A. I did at the time, yes.

24 Q. And, for clarity, when I say, the

25 flowchart, I'm talking about Exhibit 91. 02:00:29

1 Can we agree on that? 02:00:31

2 A. Yeah.

3 Q. There is no other flowchart.

4 A. Correct.

5 Q. Do you remember what you determined with 02:00:43

6 respect to the completeness of this application,

7 pursuant to step B?

8 A. I did not make a determination.

9 Q. Why not?

10 A. My recollection at the time was that the 02:01:01

11 application was complex, and, considering that the

12 city manager and police chief were cc'd on it, I

13 felt it was under their purview to provide me

14 direction on the city's response.

15 Q. Now, you previously testified that your 02:01:35

16 job at the step B level was administrative, or am I

17 using the correct terminology?

18 A. That's fair, yes.

19 Q. Meaning that you simply looked at whether

20 or not the boxes were checked, correct? 02:01:52

21 MR. MASTER: Objection. Misstates his

22 testimony. Go ahead.

23 THE WITNESS: I would say there's more to it

24 than that, but --

25 BY MR. MARKEVITCH: 02:02:03

1 Q. In part. 02:02:03

2 A. But, ensuring that the application was

3 completely filled out.

4 Q. But you did not perform that review on Mr.

5 Zeleny's application, correct? 02:02:16

6 A. Maybe I don't understand the question.

7 Q. You did not check if Mr. Zeleny's

8 application that you have here in front of you was

9 complete, pursuant to the step B process of the

10 flowchart. 02:02:35

11 A. I reviewed the application.

12 Q. Did you determine if it was complete?

13 A. I didn't, don't recall making a

14 determination.

15 Q. Did you contact Mr. Zeleny and tell him 02:02:49

16 that it was incomplete at any point?

17 A. Not that I can recall at the moment.

18 Q. Do you have a recollection of ever asking

19 Mr. Zeleny to complete any aspect of the application

20 within the context of a step B analysis? 02:03:20

21 A. I don't recall contacting Mr. Zeleny for

22 that purpose.

23 Q. Do you recall contacting Mr. Zeleny for

24 any other purpose, by telephone?

25 A. I have never spoken to Mr. Zeleny via 02:03:45

1 telephone, that I can recall. 02:03:48

2 Q. Is the application that was submitted by

3 Mr. Zeleny on July 10, 2015 complete, per the

4 standards outlined in step B?

5 A. I don't know. 02:04:19

6 Q. Can you determine that now?

7 A. The first thing I notice, looking at this

8 very quickly, is that there is no attached map, and

9 we wouldn't deem that complete.

10 Q. Anything else? 02:04:48

11 A. He doesn't identify if the event reoccurs

12 more than annually, based on the question asked of

13 him in the permit.

14 Q. Where are you looking at, please?

15 A. Event is reoccurring more than annually, 02:05:19

16 question mark, yes or no. There is nothing filled

17 out. I would need to know that answer in order to

18 route it.

19 Q. In order to do what, sir?

20 A. To route it to the permit committee. 02:05:29

21 Q. So, and I apologize, can you please point

22 where it is, because there are many boxes there.

23 MR. MARKEVITCH: Okay. So, can I show this to

24 the camera, right here. Event. Can you see it?

25 THE VIDEOGRAPHER: Don't bring it, put it back 02:05:50

1 Q. Was that before or after you passed the 02:33:55
2 application down to the, or up to the staff internal
3 review stage?
4 A. I just don't recall submitting the permit
5 to the permit committee in this particular instance. 02:34:08
6 Q. Are you saying that it was never submitted
7 to the permit committee?
8 A. I'm saying that I never submitted it to
9 the permit committee.
10 Q. Do you know if somebody else submitted it 02:34:23
11 to the permit committee?
12 A. No.
13 Q. You don't know?
14 A. I don't know.
15 Q. You mentioned that on page 1 of the 02:34:31
16 application there was a box that was not checked
17 pertaining to the question of whether event is
18 reoccurring more than annually; is that correct?
19 A. That's correct.
20 Q. And you previously testified that this 02:34:50
21 would have prevented routing; am I correct in
22 quoting you?
23 A. That would have prevented it from being
24 routed, yes, I think so.
25 Q. Now, pursuant to step B procedures, 02:35:08

1 this process regardless. 02:49:06

2 A. Correct.

3 Q. Pursuant to step C of the flowchart,

4 correct?

5 A. Correct. 02:49:13

6 Q. Any other aspect of complexity that you

7 found in this application that prompted you to

8 forward it to your superiors?

9 A. The fact that it was an event that was

10 being requested for a public median on a major 02:49:29

11 thoroughfare, there's a lot of safety implications

12 with that. That was of concern. We don't typically

13 get applications for community events on a public

14 median. It just doesn't happen. I haven't seen it.

15 Q. Is it fair to say that this application 02:50:04

16 was, in your mind, different enough that you decided

17 to forgo the entirety of the process on this

18 flowchart?

19 A. It definitely stood out.

20 Q. But you did not follow the flowchart with 02:50:17

21 regard to Mr. Zeleny's application, correct?

22 A. Well, I followed the flowchart in regards

23 to that I provided the initial review of it. I did

24 look it over, and looked at it, but I felt that

25 before we moved forward with it that city leadership 02:50:31

1 also needed to review and weigh in and provide 02:50:35
2 direction to staff.

3 Q. Is there a procedure for processing an
4 application the way you decided to do it with Mr.
5 Zeleny's? 02:50:51

6 A. Not that I recall, but, then again, we
7 have never gotten anything quite like this
8 application in before, so, it was an outlier.

9 Q. Is there a reason why this application
10 could not be processed the way the flowchart 02:51:04
11 indicates an application should be processed?

12 A. Again, due to the complexity of what was
13 submitted to me, I felt that it was necessary that
14 city leadership provide direction to staff.

15 (Exhibit 98 was marked for identification 02:51:58
16 by the court reporter and is attached hereto.)

17 BY MR. MARKEVITCH:

18 Q. Do you recognize this chain of e-mails?

19 A. Yes.

20 Q. So, again, you forwarded this application 02:52:47
21 to Clay Curtin and Jim Cogan; is that correct?

22 A. That's correct.

23 Q. Why did you do that?

24 A. They were the heads of the communication
25 team, and, as part of our responsibilities with the 02:53:03

1 the exact location he was intending, as it was not 02:57:00
2 clear on his application. Period.

3 Do you recall being aware on July 21, 2015
4 that the application was going to be denied?

5 A. I can't say if I was or not. 02:57:18

6 Q. Do you recall at any point being aware
7 that the application is being denied, though you
8 were still collecting some information from Mr.
9 Zeleny?

10 A. I don't recall. 02:57:35

11 Q. Do you recall the circumstances of how you
12 found out that the application is going to be
13 denied?

14 A. I recall a telephone call with Commander
15 Bertini, who mentioned that he was working in 02:57:55
16 conjunction with the city attorney's office and the
17 city manager to prepare a city response to Mr.
18 Zeleny, and that the next step at that time was, I
19 would be given verbiage on a denial that I would
20 send to Mr. Zeleny. That's how I found out. 02:58:31

21 Q. Do you remember when this telephone call
22 took place?

23 A. I don't.

24 Q. Did Chief Bertini then tell you what the
25 reasoning was for why the denial was being issued? 02:58:45

1 (Exhibit 103 was marked for identification 03:44:12
2 by the court reporter and is attached hereto.)
3 BY MR. MARKEVITCH:
4 Q. This is a chain of e-mails starting with
5 MP000451. 03:45:20
6 Mr. Milde, have you seen this e-mail
7 before, or this chain of e-mails before?
8 MR. MASTER: Which? Is there a specific
9 e-mail? There are multiple e-mails in here.
10 BY MR. MARKEVITCH: 03:45:48
11 Q. The top e-mail on page 1, which is the
12 last e-mail, is addressed to you, Mr. Milde,
13 correct?
14 A. Me and others, correct.
15 Q. And it is from Chief Bertini, correct? 03:46:03
16 A. Appears so, yes.
17 Q. And Chief Bertini writes, Matt, we all
18 received the e-mail, period. Do not reply. Stand
19 by for our response. Dot, dot, dot, dot.
20 A. Okay. 03:46:22
21 Q. Correct?
22 A. That's what it says.
23 Q. Was Chief Bertini referring to you in that
24 e-mail?
25 A. Yes, I believe so. 03:46:28

1 Q. So, he was telling you to not reply, and 03:46:31
2 stand by, correct?
3 A. Correct.
4 Q. Why was he saying that to you?
5 A. I don't know. 03:46:38
6 Q. Did he ever explain to you why he wanted
7 you to stand by, rather than reply in any way?
8 A. I recall a phone conversation with
9 Commander Bertini in which he had asked me to stand
10 by, and that the city would be drafting a response, 03:47:07
11 and that I would be hearing back from him.
12 Q. Did he say why he wanted you to stand by,
13 and have somebody else draft a response?
14 A. No, not that I can recall.
15 Q. Do you have any recollection of any 03:47:25
16 explanation for why they were asking you to do
17 nothing?
18 A. No.
19 Q. How long was that phone call?
20 A. Can't say exactly, but it was brief. 03:47:43
21 Q. Was it on the same day when he e-mailed
22 you asking you to stand by?
23 A. I don't recall.
24 Q. Do you remember receiving this e-mail?
25 A. I believe I do. 03:48:04

1 A. I don't. 04:27:20

2 Q. Does it appear to you that at that point

3 you were still somehow involved in the process?

4 A. Only by the fact that I'm cc'd here on the

5 e-mail by Mr. Zeleny. 04:27:43

6 Q. Anything beyond that?

7 A. No, not that I can tell.

8 MR. MARKEVITCH: Why don't we go off record.

9 THE VIDEOGRAPHER: Going off the record the

10 time is 4:27. 04:28:17

11 (Recess: 4:27 p.m. to 4:39 p.m.)

12 THE VIDEOGRAPHER: We're back on the record.

13 The time is 4:39.

14 BY MR. MARKEVITCH:

15 Q. Mr. Milde, have you participated in any 04:40:16

16 hearings related to Mr. Zeleny's permit application?

17 A. No.

18 Q. Did you provide any assistance to the city

19 manager with regard to any matter related to Mr.

20 Zeleny? 04:40:36

21 A. No.

22 Q. Let's go back to Exhibit number 33, which

23 is the one you have there, and on page 1820, so

24 that's the fourth page of the document. Towards the

25 bottom, there is a section titled, what would cause 04:41:06

1 a permit to get denied. 04:41:09

2 Do you see that?

3 A. Yes.

4 Q. And this paragraph lists a number of

5 factors. Do you mind reading them out, just for the 04:41:19

6 record.

7 A. Yeah. Approval or denial of applications

8 are based --

9 MR. MASTER: Slow.

10 THE WITNESS: Sorry. 04:41:32

11 -- upon several factors, including size, in

12 parentheses, number of people, scale, location,

13 route to be closed, community impact, impact on city

14 services, past event, as reflected in the

15 application, and site map, et cetera. 04:41:56

16 BY MR. MARKEVITCH:

17 Q. I apologize. I think you missed a line

18 there.

19 MR. MASTER: You skipped a line.

20 THE WITNESS: Oh, did I? 04:42:03

21 MR. MASTER: You skipped a line. Past

22 practices.

23 THE WITNESS: Oh, I see. I'm sorry. That

24 makes sense.

25 Past practices, experiences with issued with 04:42:10

1 permits, intended use, nonpayment of fees, poor 04:42:12
2 articulation of event as reflected in the
3 application and site map, et cetera.
4 BY MR. MARKEVITCH:
5 Q. Is this an exhaustive list of factors for 04:42:23
6 a denial of a permit?
7 A. Doesn't appear to be.
8 Q. What are other factors?
9 MR. MASTER: I will just object as vague and
10 ambiguous, overbroad, incomplete hypothetical, calls 04:42:42
11 for speculation. You can answer.
12 THE WITNESS: I couldn't say.
13 BY MR. MARKEVITCH:
14 Q. Is there any guideline for identifying
15 other factors in reviewing an application? 04:42:54
16 A. Not that I'm aware.
17 Q. Now, looking at the factors more
18 specifically, size, number of people, is there a
19 guideline for what size is appropriate and what size
20 is not? 04:43:19
21 MR. MASTER: Objection. Vague and ambiguous.
22 Overbroad.
23 THE WITNESS: It would depend on the
24 application.
25 BY MR. MARKEVITCH: 04:43:37

1 1 I, the undersigned, a Certified Shorthand
2 2 Reporter of the State of California, do hereby
3 3 certify:

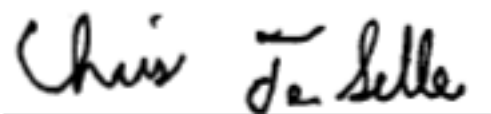
4 4 That the foregoing proceedings were taken
5 5 before me at the time and place herein set forth;
6 6 that any witnesses in the foregoing proceedings,
7 7 prior to testifying, were duly sworn; that a record
8 8 of the proceedings was made by me using machine
9 9 shorthand which was thereafter transcribed under my
10 10 direction; that the foregoing transcript is a true
11 11 record of the testimony given.

12 12 Further, that if the foregoing pertains to the
13 13 original transcript of a deposition in a Federal
14 14 Case, before completion of the proceedings, review
15 15 of the transcript [] was [] was not requested.

16 16 I further certify I am neither financially
17 17 interested in the action nor a relative or employee
18 18 of any attorney or party to this action.

19 19 IN WITNESS WHEREOF, I have this date subscribed
20 20 my name.

21 21
22 22 Dated: March 19, 2020.

23 23 
24 24

CHRIS TE SELLE

CSR No. 10836

25 25

Exhibit H-1



MENLO PARK POLICE DEPARTMENT

Page 1

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

Case
10-2678

GENERAL CASE REPORT

OFFENSES	Offenses	Description	Fel/Misd	Date Occurred	Time Occurred	Incident #
	Info	General Information Case		09/28/2010	0900 - 1600	1009270012
				Date Reported	Time Reported	
				09/28/2010	0600	
				Related Cases		
				10-2666		
			Date Printed	Time Printed	Printed By	
			01/28/2019	13:38:38	15159	
			Latitude	Longitude		
			0.000000	0.000000		
	Location	Beat	Area	Disposition	Dispo Date	
	Nea, 2855 Sand Hill Rd, Menlo Park, CA 94025	1	30	Closed	09/28/2010	
	Location Type	Location of Entry	Method of Entry	Point of Entry	Alarm System	Means of Attack (Robbery)
	Other Commercial					
	Victim	Drivers License	Cell Phone	Email		
	Residence Address	Notified of Victim Rights	Residence Phone	DOB	Age	Sex
	Business Name and Address	Business Phone	Height	Wt	Hair	Eyes
	Assistance Rendered/Victim Disposition	Transporting Agency	Means of Attack (Assaults)			
	Description of Injuries	Other Information				
	Party	Drivers License	Cell Phone	Email		
	Nea					
	Residence Address	Residence Phone	DOB	Age	Sex	Race
	2855 Sand Hill Rd, Menlo Park, CA 94025	650-854-9499				
	Business Name and Address	Business Phone	Height	Wt	Hair	Eyes
	Suspect Name	Action Taken	Charges			
	Residence Address	Residence Phone	DOB	Age	Sex	Race
	Business Name and Address	Business Phone	Height	Wt	Hair	Eyes
	Identifying Features	Cell Phone	Drivers License	Arrest Number		
	Aliases					
VEHICLES	Status	Vehicle Make and Model	License/State	VIN		
OFFICERS	Prepared By	Date	Assisted By	Approved By	Date	
	14749 - Apple, David	09/28/2010		14757 - Brackett, Tim	09/29/2010	
	Routed To	Date	Routed To	Date	Notes	
	Stanford DPS	05/21/2012				
	Sent to DA Kevin Collins	06/28/2012				

EXHIBIT 46

Chief Dave Bertini

3/19/2019

Heather J. Bautista
CSR 11600, RPR, CRR

CONTROLLED DOCUMENT - MPPD

MP001895

**MENLO PARK POLICE DEPARTMENT**

Page 2

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

Case
10-2678**GENERAL CASE REPORT**

Party Zeleny, Michael	Drivers License C4374887 CA	Cell Phone	Email			
Residence Address 7576 Willow Glen Rd, Los Angeles, CA 90046	Residence Phone 310-979-8700	DOB 02/26/1958	Age 52	Sex M	Race	
Business Name and Address	Business Phone	Height 5'11"	Wt 185	Hair BLK	Eyes HZL	

CONTROLLED DOCUMENT - MPPD

MP001896

**MENLO PARK POLICE DEPARTMENT**

Page 3

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

NARRATIVE

10-2678

SYNOPSIS:

P/Michael Zeleny had a peaceful protest in front of NEA at 2855 Sand Hill Road. Zeleny had posters and reading information, that he handed out to passer-bys, regarding his protest. In attendance was a two man film crew, four people in support of Zeleny's protest, and two musicians.

NARRATIVE:

On 9-28-2010, at approximately 0900 hours, I arrived at 2855 Sand Hill Road and met with P/Michael Zeleny regarding a planned protest of the company NEA. Zeleny was there to protest three individuals that were either current or former employees/associates with NEA. Zeleny stated that he was going to have music playing during his protest and I advised him that the music needed to be at a sound level so that it would not disrupt business.

As Zeleny and his supporters began to set up for the protest, he set up posters and signs along the walkway that led to front entrance to NEA. I overheard a supporter state that the signs be placed in a manner as to not block the pathway for any individual. At no time did I determine that any sign block the path or restricted the walkway to any individual at any time. However, the signs were placed in a way that any persons that walked the pathway would have to serpentine through the signs. It was later requested by Sergeant Prickett that Zeleny re-arrange the posters as to not be set up as a serpentine. Zeleny agreed and voluntarily moved the posters and re-arranged them. The signs and posters again were not blocking the pathway at any time.

Two of Zeleny's supporters had walked to the building next door to the Rosewood Hotel to use the restroom. The hotel staff requested that they leave the property, which they complied with. It was made clear to Zeleny and his supporters that they were not allowed onto the Rosewood Hotel property and they agreed to this request.

Zeleny then went inside his vehicle and retrieved a 12-gauge shotgun. I contacted Zeleny about the shotgun and he was compliant in my request to check the weapon to ensure that it was not loaded. The shotgun slide was open and I inspected the shotgun and observed that there were not rounds of ammunition located inside the gun. Zeleny had the shot gun in a sling around his shoulders. Zeleny also had a bandoleer with shotgun shells around his shoulders as well.

Zeleny then had a bagpiper arrive to play the bag pipe. The bagpiper began to play music that was audible from inside NEA. NEA employees requested that the music be quiet or moved to an area as to not disrupt business. Officers informed Zeleny of the issue with the music being too loud and had the bagpiper move to an area near the street and away from the building. After the bagpiper moved, the music was at an acceptable level.

The bagpiper then left and a trumpet player showed up and began to play. Again the music was at a level that it began to disrupt NEA business. The trumpet player was playing in the same location where the bagpiper was playing music at an acceptable level. Because the trumpet had a different tone and pitch, a request was made to the trumpet player to play at a lower volume. The trumpet player and Zeleny agreed to this request and the trumpet player continued to play music at an acceptable level.

Prepared By:

14749 APPLE, DAVID

Date:

09/29/2010

Approved By:

14757 BRACKETT, TIM

Date:

09/29/2010

CONTROLLED DOCUMENT - MPDP

MP001897

**MENLO PARK POLICE DEPARTMENT**

Page 4

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

NARRATIVE

10-2678

The rest of the afternoon consisted of Zeleny and his supporters passing out fliers and literature. There was nothing further to note and Zeleny stopped his protest at 1600 hours.

RECOMMENDATION:

I recommend this case be closed and used for informational purposes only.

CONTROLLED DOCUMENT - MP001898**Prepared By:**

14749 APPLE, DAVID

Date:

09/29/2010

Approved By:

14757 BRACKETT, TIM

Date:

09/29/2010

MP001898

Exhibit H-2



MENLO PARK POLICE DEPARTMENT

Page 1

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300
GENERAL CASE REPORTCase
10-2739

OFFENSES

Offenses Info	Description General Information Case	Fel/Misd	Date Occurred 10/04/2010	Time Occurred 1321	Incident # 1010040081
			Date Reported 10/04/2010	Time Reported 1317	
Related Cases					
			Date Printed 01/28/2019	Time Printed 13:42:09	Printed By 15159
			Latitude 0.000000	Longitude 0.000000	
Location New Enterprise Associates, 2855 Sand Hill Rd, Menlo Park, CA 94025		Beat 1	Area 30	Disposition Closed	Dispo Date 10/04/2010
Location Type	Location of Entry	Method of Entry	Point of Entry	Alarm System	Means of Attack (Robbery)

Reporting Party Chandler, Robert Allen	Drivers License [REDACTED]	Cell Phone	Email			
Residence Address [REDACTED]	Notified of Victim Rights	Residence Phone [REDACTED]	DOB 03/13/1951	Age 59	Sex M	Race W
Business Name and Address Concord, CA		Business Phone 925-286-888	Height 5'11"	Wt 190	Hair BRO	Eyes BRN
Assistance Rendered/Victim Disposition		Transporting Agency	Means of Attack (Assaults)			
Description of Injuries		Other Information				

Party Zeleny, Michael	Drivers License C4374887 CA	Cell Phone	Email			
Residence Address [REDACTED]		Residence Phone 310-979-8700	DOB 02/26/1958	Age 52	Sex M	Race W
Business Name and Address		Business Phone	Height 5'11"	Wt 185	Hair BLK	Eyes HZL

Suspect Name	Action Taken	Charges				
Residence Address	Residence Phone	DOB	Age	Sex	Race	
Business Name and Address	Business Phone	Height	Wt	Hair	Eyes	
Identifying Features	Cell Phone	Drivers License		Arrest Number		
Aliases				Val Damaged		

VEHICLES

Status	Vehicle Make and Model	License/State	VIN
--------	------------------------	---------------	-----

OFFICERS

Prepared By 7128 - Keegan, Jeff	Date 10/04/2010	Assisted By	Approved By 14757 - Brackett, Tim	Date 10/07/2010
Routed To Stanford DPS	Date 05/21/2012	Routed To	Date	Notes
Sent to DA Kevin Collins		06/28/2012		

CONTROLLED DOCUMENT - MPPD

EXHIBIT 47
Chief Dave Bertini
3/19/2019
Heather J. Bautista
CSR 11600, RPR, CRR

MP001871

MP001872

**MENLO PARK POLICE DEPARTMENT**

Page 3

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

NARRATIVE

10-2739

SYNOPSIS: Contact with a civil protestor carrying an unloaded weapon outside a business.

NARRATIVE:

10-04-2010 at approx. 1406 hrs.

I responded to a report of a returned protestor trespassing on private property outside the business at 2855 Sand Hill Road. RP- Chandler called requesting police contact the armed protestor, P- Michael Zeleny, and determine if the shotgun he was carrying was unloaded. I was familiar with the individual from prior incidents at that address. I was aware he was carrying weapons during his protest, as "open carry" of unloaded weapons.

I arrived at approx. 1410 hrs. I saw Mr. Zeleny and two other men with him with video cameras standing in front of the entrance walk to 2855 San Hill Road. I noted they were video recording my contact and approach. I made a digital audio recording of the contact and I later downloaded the audio to the secure server at MPPD. I noted Mr. Zeleny had a shotgun and a separate bandolier with dozens of red unknown gauge shotgun shells slung over his torso.

I approached P- Zeleny, without asking him any questions, he immediately asked me if I wanted to inspect his shotgun and he voluntarily offered it to me to inspect. He took the sling over his head, handed me the weapon and instructed me how to open the action as I inspected the shotgun, per 12031 (e) PC, without incident. The shotgun was unloaded. I thanked Mr. Zeleny for his cooperation and left the scene shortly thereafter. No further information.

PROPOSITION 9 COMPLIANT: N/A

RECOMMENDATION: None.

CONTROLLED DOCUMENT - MPPD

Prepared By:

7128 KEEGAN, JEFF

Date:

10/04/2010

Approved By:

14757 BRACKETT, TIM

Date:

10/07/2010

MP001873

Exhibit H-3

From: Paugh, Kevin R
To: Police Department
Subject: DAILY ACTIVITY LOG 02-09-12
Date: Friday, February 10, 2012 5:58:00 AM
Attachments: DAILY ACTIVITY LOG 02-09-12.pdf



MP000061

MENLO PARK POLICE

DAILY ACTIVITY LOG B Side / February 09, 2012

B Days

Watch Commander: Sergeant Brackett

<u>OFFICER</u>	<u>HOURS</u>	<u>BEAT</u>	<u>VEH</u>	<u>A/C</u>	<u>AR/LL</u>	<u>PAS</u>	<u>CITES</u>	<u>CASES/SUPS</u>
Brackett	0600-1800	WC	24	-	-	-	0	0/0
Trask	0600-1800	1	3	19	LL1	-	1	2/0
Poirier/FTO	0600-1800	1	19	5	AR	-	0	1/0
Ordone/FTO	0600-1800	1	19	5	-	-	2	1/0
Baxter	1000-1800	2	20	16	LL2	-	0	0/0
Hughes	0600-1800	3	15	18	LL1	-	1	0/2
Adair	0600-1800	3	17	15	-	-	3	0/0
*Shift Adjust								
<u>OFF-DUTY</u>	<u>REASON</u>	<u>REPLACEMENT</u>						
Byars	Training	Baxter						
Solorzano	Vaca	None						
-	-	None						
<u>TRAINING/OTHER</u>								
BOL's, E-mails, TRAK flyers, Daily Training Bulletin-Use of Force to Effect an Arrest, Missing Person								

B Mids

Watch Commander: Sergeant Paugh

<u>OFFICER</u>	<u>HOURS</u>	<u>BEAT</u>	<u>VEH</u>	<u>A/C</u>	<u>AR/LL</u>	<u>PAS</u>	<u>CITES</u>	<u>CASES/SUPS</u>
Paugh	1800-0600	WC	23	Sgt	AR/LL	-	3	0/0
Swanson/Lacy	1800-0600	1	14	3	LL5	8	4	1/1
Tommei	1800-0600	1	4	2	AR	1	5	1
Knopp	1800-0600	2	8	8	AR/LL8	-	4	1
Weber	1800-0600	2	17	9	40#1	7	4	1/1
Perma	1800-0600	3	15	18	LL1	3	1	0/1
Luevano	1500-0600	3	7	16	-	-	3	0/2
*Shift Adjust								
<u>OFF-DUTY</u>	<u>REASON</u>	<u>REPLACEMENT</u>						
-	-	None						
-	-	None						
-	-	None						
<u>TRAINING/OTHER</u>								
BOL's, E-mails, TRAK flyers, Prone Position Training video, Daily Training Bulletin-OIS representation								

MP000062

Major Incidents

None.

Calls, Service, and Arrests

Days

12-482 / Officer Hughes

Gang Info

[REDACTED] (Beat 3)

During a consensual contact, a juvenile subject was found to be on active San Mateo County probation and admitted to being associated with the Norteno street gang. The subject was observed having gang related tattoos and wearing gang associated clothing.

12-483 / Officer Ordone

1182

[REDACTED] (Beat 2)

P-1 was towing a trailer, eastbound on Marsh Road. P-1 drifted into the number 3 lane, where he collided with the side door of V-2.

12-484 / Officer Sepulveda

484g(a) PC - Misd

[REDACTED] (Beat 2)

Unknown suspect(s) obtained the victim's credit card information by unknown means and made unauthorized purchases.

12-485 / Officer Hughes

647.6(A) PC

[REDACTED] (Beat 3)

The suspect molested the juvenile confidential victim by kissing her repeatedly on and around her mouth.

12-486 / Officer Hughes

243(e)(1) PC

[REDACTED] (Beat 2)

The Victim and the Suspect have a 4 year old daughter together. The Suspect struck the Victim several times, while he was driving his vehicle. The Suspect sustained no visible injury as a result of the assault. This incident took place in San Diego California 45 days prior to being reported to the Menlo Park Police Department. The Suspect in this incident lives in San Diego and has been named, although I was unable to find any record of her or her address in all data bases available to me.

12-487 / Officer Sepulveda

488 PC

[REDACTED] (Beat 2)

Unknown suspect(s) took an iPhone cell phone from a teacher's desk. There are no leads at this time..

12-488 / Officer Baxter

Prop Dest

[REDACTED] (Beat 2)

On 02-09-2012, at 1130 hours, P [REDACTED] requested that her hand gun be destroyed. The handgun, a Sig Sauer P220 9mm was booked into property for destruction.

Mids

12-490 / Weber

240-242 PC

[REDACTED] (Beat 2)

A juvenile was assaulted by 4 unknown suspects in the carport area of [REDACTED]. The victim was struck multiple times with closed fists. The victim did not sustain any visible injuries. The suspects, described only as HMA's in their early 20's, wearing all black, and driving a black sedan with chrome rimes, are currently outstanding. (2001 hours)

12-491 / Lacy

530.5(c) PC

[REDACTED] (Beat 1)

Victim reported a bank account and credit card fraudulently opened in their name. No known loss at this time. (2107 hours)

12-492 / Tommei

Info Case

[REDACTED] (Beat 1)

On 2/8/11, Officers contacted intoxicated subjects leaving the Oak City Bar after hours. Today, the bar manager was

contacted and a bar check was conducted. During the check, several ABC violations were noted. Case taken for documentation. (2230 hours)

12-493 / Knopp, team 12021, 12025, 496, 3056, 647(h), 11357(c), stored veh [REDACTED] (Beat 2)
While conducting burglary suppression, Officer Knopp observed a suspicious vehicle parked in the rear of a business located at [REDACTED]. Upon seeing the police, the occupants of the vehicle drove away and attempted to evade police by driving without their headlights illuminated. The subjects were then located behind [REDACTED] and contacted. One occupant of the vehicle was found to be on Parole, and all had extensive H&S and burglary history. During a search of the vehicle, 188 grams of Marijuana was located in a truck bed toolbox. Concealed in storage container located in the engine compartment, officer located 3 loaded handguns (.40 cal, . Record checks on the weapons found that two had been stolen out of San Mateo. In one of the burglaries, Suspect [REDACTED] was named as a suspect. [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) were all arrested on various charges and booked into County Jail. SMPD was contacted and advised. Their detectives will conduct further investigation into their burglary tomorrow. (0053 hours)

Outside Assist

Mids

PAPD sgt was contacted for Officer Safety reasons and advised of Zeleny's actions today, as well as the fact that Zeleny was staying in a hotel in their city.

MPPD was advised of a possible suicidal subject who had left Sequoia Hospital after advising a doctor that he wanted to injure himself. The subject was located at a residence in Menlo Park and was voluntarily transported to the hospital for treatment.

Problem Solving

Days

Officers responded to 2855 Sandhill Rd in regards to an open carry demonstration. Upon arrival two subjects, Michael Zeleny and Michael Wong were contacted and found to be legally carrying unloaded rifles. Both subjects were wearing military style uniforms, level IIIA tactical vests (one with a ceramic trauma plate). The rifles carried by the subjects were M1A type, .308 cal, and they each had several loaded 10 round magazines on their person, but not loaded in the rifles. The demonstration was targeted at a venture capital company, to discourage their business deals with an individual. No crimes were committed, both subjects were cooperative with police and the incident was peaceful. **Officers were on scene for approximately 6 hrs.**

Community Outreach

None.

Traffic Complaints

Mids

Officers conducted cellphone enforcement at several locations in the city during evening commute.

Parking Citations / Subpoena Service / FI's / Gang Validations

	<u>Parking Cites</u>	<u>Stored Vehicles</u>	<u>Subpoena Service</u>	<u>FIs / Gang Validations</u>
<u>Days</u>		0	0	1/0
<u>Mids</u>	1	1	2	0/0

Reported Stolen Vehicle

<u>Plate</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>Color</u>	<u>Location</u>
--------------	-------------	-------------	--------------	--------------	-----------------

NET Investigations / Activity

None.

Records / Parking Enforcement Activity

		<u>Parking Cites</u>	<u>Stored Vehicles</u>		
<u>Days</u>	Dayharsh	27	0		
	Sharma	27	0		
<u>Mids</u>	Campos	0	0		
	Urena	25	0		
<u>REGISTRANTS</u>		<u>290</u>	<u>11590</u>	<u>Arson</u>	<u>Gang</u>
None		0	0	0	0

Exhibit H-4

From: Ortega, Matthew K
To: Police Department
Subject: 06-20-12 DAILY ACTIVITY LOG
Date: Wednesday, June 20, 2012 5:58:32 PM
Attachments: 06-20-12 DAILY ACTIVITY LOG.pdf

EXHIBIT 50
Chief Dave Bertini
3/19/2019
Heather J. Bautista
CSR 11600, RPR, CRR

MP000120

MENLO PARK POLICE

DAILY ACTIVITY LOG A Side / June 20, 2012

A Days

Watch Commander: Sergeant Ortega

<u>OFFICER</u>	<u>HOURS</u>	<u>BEAT</u>	<u>VEH</u>	<u>A/C</u>	<u>AR/LL</u>	<u>PAS</u>	<u>CITES</u>	<u>CASES/SUPS</u>
Ortega	0600-1800	WC	23	Sgt	LL	-	0	0/0
Phu	0600-1800	1	21	1	AR	-	6	2/1
Solorzano	0600-1800	1	19	13	5	-	0	1/0
Byars	0600-1800	2	13	12	15	-	1	1/1
Igno	0600-1800	3	2	5	AR	-	14	1/0
Lacy	0600-1800	3	4	14	2	-	5	0/1
Ordone	1100-2100	CSO	33	-	-	-	0	2/0
Sepulveda	1100-2100	CSO	49	-	-	-	0	1/0
*Shift Adjust								
<u>OFF-DUTY</u>	<u>REASON</u>	<u>REPLACEMENT</u>						
Trask	.ANW/Exp Aca	None						
-	-	None						
-	-	None						
<u>TRAINING/OTHER</u>								
BOL's, E-mails, TRAK flyers, Daily Training Bulletin-Search & Seizure/Const. Rights, Secondary Firearm								

A Mids

Watch Commander: Sergeant Soares

<u>OFFICER</u>	<u>HOURS</u>	<u>BEAT</u>	<u>VEH</u>	<u>A/C</u>	<u>AR/LL</u>	<u>PAS</u>	<u>CITES</u>	<u>CASES/SUPS</u>
Ortega	0600-1800	WC	23	-	-	-	0	0/0
Simpson	1800-0600	1	16	-	-	-	0	0/0
Mackdanz	1800-0600	1	25	-	-	-	0	0/0
Igno	1800-0600	2	2	-	-	-	0	0/0
J. Venzon	1800-0600	2	11	-	-	-	0	0/0
Russell	1800-0600	2	12	-	-	-	0	0/0
Schuler	1800-0600	3	6	-	-	-	0	0/0
Mendoza	1800-0600	3	13	-	-	-	0	0/0
*Shift Adjust								
<u>OFF-DUTY</u>	<u>REASON</u>	<u>REPLACEMENT</u>						
-	-	None						
-	-	None						
-	-	None						
<u>TRAINING/OTHER</u>								
BOL's, E-mails, TRAK flyers, Daily Training Bulletin-Use of Force to Effect an Arrest, Missing Person								

Major Incidents

None.

Calls, Service, and Arrests

Days

12-1900 / Igno Wrt Arr/MP-Misdemeanor [REDACTED] (Beat 3)
SA-[REDACTED] was contacted during a traffic stop and found to have an outstanding warrant for 14601 CVC. He was cited and released.

12-1901 / Solorzano 460(a) PC [REDACTED] (Beat 1)
RP gardener reported that client at this address had been burglarized. RP found jewelry on the ground in front of house and when checked front door it was open. RP then found that a rear yard window had been smashed. Residents have been out of town since 06/11/12. Burglary occurred between 06/13/12 and 06/20/12. Gardeners were last at this address on 06/13 and everything looked fine. Unknown what property was missing, residents will not be home until 06/22.

12-1902 / Byars Missing Adult-At Risk [REDACTED] (Beat 2)
MP-[REDACTED] voluntarily walked away from the Golden Years Manor care facility on 06/19/12. MP must take medication multiple times daily for paranoid schizophrenia.

12-1903 / Phu Info Case/Zeleny 2825 Sand Hill Rd (Beat 1)
P-Michael Zeleny was contacted at the Rosewood Hotel and his weapons were checked and photographed for documentation. P-Zeleny was very cooperative.

12-1904 / Ordone 1182 Non Injury Accident ECR/Oak Grove Ave (Beat 1)
Two-vehicle rear end collision, no injury.

12-1905 / Ordone 530.5(A) PC [REDACTED] (Beat 1)
Unknown suspects used the victim's name and social security number to obtain a cellular phone account and generated a \$1,359.00 bill.

12-1906 / Sepulveda 20002 CVC [REDACTED] (Beat 3)
Unknown suspect driving a dark colored SUV possibly a Dodge turned into the victim's driveway and struck her parked car and fled.

12-1907 / Phu 594(b)(2)(A) PC [REDACTED] (Beat 1)
Unknown suspect(s) shot a BB or pellet through the victim's un occupied/parked vehicle. Occurred sometime between 1400 hr and 1600 hrs today.

12-1908 / del Mundo NET Wrt Arr/Outsid-Misdemeanor [REDACTED] (Beat 99)
SA-[REDACTED] was contacted during a traffic stop and found to have a \$10,000 warrant out of SJPD and a \$5,000 warrant out of SCCSO for \$5,000, both for 14601 CVC. SA-[REDACTED] was arrested and booked into county jail.

Mids

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

Outside Assist

None.

Problem Solving

None.

Community Outreach

Carolina Gaskin, CSO Ordone, CSO Sepulveda, and MPPD Explorers represented MPPD at a table during the city Downtown Block Party.

Traffic Complaints

None.

Parking Citations / Subpoena Service / FI's / Gang Validations

	<u>Parking Cites</u>	<u>Stored Vehicles</u>	<u>Subpoena Service</u>	<u>FIs / Gang Validations</u>
<u>Days</u>	4	0	0	0/0
<u>Mids</u>	0	0	0	0/0

Reported Stolen Vehicle

<u>Plate</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>Color</u>	<u>Location</u>
--------------	-------------	-------------	--------------	--------------	-----------------

NET Investigations / Activity

None.

MP000123

Records / Parking Enforcement Activity				
--	--	--	--	--

		<u>Parking Cites</u>		<u>Stored Vehicles</u>	
<u>Days</u>	Dayharsh	14		0	
	Sharma	0		0	
<u>Mids</u>	Campos	0		0	
	Urena	0		0	
<u>REGISTRANTS</u>		<u>290</u>	<u>11590</u>	<u>Arson</u>	<u>Gang</u>
None		0	0	0	0

Exhibit H-5

From: Ortega, Matthew K
To: Police Department
Subject: 06-20-12 DAILY ACTIVITY LOG
Date: Wednesday, June 20, 2012 5:58:32 PM
Attachments: 06-20-12 DAILY ACTIVITY LOG.pdf

MENLO PARK POLICE

DAILY ACTIVITY LOG A Side / June 20, 2012

A Days

Watch Commander: Sergeant Ortega

<u>OFFICER</u>	<u>HOURS</u>	<u>BEAT</u>	<u>VEH</u>	<u>A/C</u>	<u>AR/LL</u>	<u>PAS</u>	<u>CITES</u>	<u>CASES/SUPS</u>
Ortega	0600-1800	WC	23	Sgt	LL	-	0	0/0
Phu	0600-1800	1	21	1	AR	-	6	2/1
Solorzano	0600-1800	1	19	13	5	-	0	1/0
Byars	0600-1800	2	13	12	15	-	1	1/1
Igno	0600-1800	3	2	5	AR	-	14	1/0
Lacy	0600-1800	3	4	14	2	-	5	0/1
Ordone	1100-2100	CSO	33	-	-	-	0	2/0
Sepulveda	1100-2100	CSO	49	-	-	-	0	1/0
*Shift Adjust								
<u>OFF-DUTY</u>	<u>REASON</u>	<u>REPLACEMENT</u>						
Trask	.ANW/Exp Aca	None						
-	-	None						
-	-	None						
<u>TRAINING/OTHER</u>								
BOL's, E-mails, TRAK flyers, Daily Training Bulletin-Search & Seizure/Const. Rights, Secondary Firearm								

A Mids

Watch Commander: Sergeant Soares

<u>OFFICER</u>	<u>HOURS</u>	<u>BEAT</u>	<u>VEH</u>	<u>A/C</u>	<u>AR/LL</u>	<u>PAS</u>	<u>CITES</u>	<u>CASES/SUPS</u>
Ortega	0600-1800	WC	23	-	-	-	0	0/0
Simpson	1800-0600	1	16	-	-	-	0	0/0
Mackdanz	1800-0600	1	25	-	-	-	0	0/0
Igno	1800-0600	2	2	-	-	-	0	0/0
J. Venzon	1800-0600	2	11	-	-	-	0	0/0
Russell	1800-0600	2	12	-	-	-	0	0/0
Schuler	1800-0600	3	6	-	-	-	0	0/0
Mendoza	1800-0600	3	13	-	-	-	0	0/0
*Shift Adjust								
<u>OFF-DUTY</u>	<u>REASON</u>	<u>REPLACEMENT</u>						
-	-	None						
-	-	None						
-	-	None						
<u>TRAINING/OTHER</u>								
BOL's, E-mails, TRAK flyers, Daily Training Bulletin-Use of Force to Effect an Arrest, Missing Person								

Major Incidents

None.

Calls, Service, and Arrests

Days

12-1900 / Igno

Wrt Arr/MP-Misdemeanor

[REDACTED] (Beat 3)

SA-[REDACTED] was contacted during a traffic stop and found to have an outstanding warrant for 14601 CVC. He was cited and released.

12-1901 / Solorzano

460(a) PC

[REDACTED] (Beat 1)

RP gardener reported that client at this address had been burglarized. RP found jewelry on the ground in front of house and when checked front door it was open. RP then found that a rear yard window had been smashed. Residents have been out of town since 06/11/12. Burglary occurred between 06/13/12 and 06/20/12. Gardeners were last at this address on 06/13 and everything looked fine. Unknown what property was missing, residents will not be home until 06/22.

12-1902 / Byars

Missing Adult-At Risk

[REDACTED] (Beat 2)

MP-[REDACTED] voluntarily walked away from the Golden Years Manor care facility on 06/19/12. MP must take medication multiple times daily for paranoid schizophrenia.

12-1903 / Phu

Info Case/Zeleny

2825 Sand Hill Rd (Beat 1)

P-Michael Zeleny was contacted at the Rosewood Hotel and his weapons were checked and photographed for documentation. P-Zeleny was very cooperative.

12-1904 / Ordone

1182 Non Injury Accident

ECR/Oak Grove Ave (Beat 1)

Two-vehicle rear end collision, no injury.

12-1905 / Ordone

530.5(A) PC

[REDACTED] (Beat 1)

Unknown suspects used the victim's name and social security number to obtain a cellular phone account and generated a \$1,359.00 bill.

12-1906 / Sepulveda

20002 CVC

[REDACTED] (Beat 3)

Unknown suspect driving a dark colored SUV possibly a Dodge turned into the victim's driveway and struck her parked car and fled.

12-1907 / Phu

594(b)(2)(A) PC

[REDACTED] (Beat 1)

Unknown suspect(s) shot a BB or pellet through the victim's un occupied/parked vehicle. Occurred sometime between 1400 hr and 1600 hrs today.

12-1908 / del Mundo NET

Wrt Arr/Outsid-Misdemeanor

[REDACTED] (Beat 99)

SA-[REDACTED] was contacted during a traffic stop and found to have a \$10,000 warrant out of SJPD and a \$5,000 warrant out of SCCSO for \$5,000, both for 14601 CVC. SA-[REDACTED] was arrested and booked into county jail.

Mids

12-0000 / Officer

Charges

Address (Beat)

Case details.

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

12-0000 / Officer
Case details.

Charges

Address (Beat)

Outside Assist

None.

Problem Solving

None.

Community Outreach

Carolina Gaskin, CSO Ordone, CSO Sepulveda, and MPPD Explorers represented MPPD at a table during the city Downtown Block Party.

Traffic Complaints

None.

Parking Citations / Subpoena Service / FI's / Gang Validations

	<u>Parking Cites</u>	<u>Stored Vehicles</u>	<u>Subpoena Service</u>	<u>FIs / Gang Validations</u>
<u>Days</u>	4	0	0	0/0
<u>Mids</u>	0	0	0	0/0

Reported Stolen Vehicle

<u>Plate</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>Color</u>	<u>Location</u>
--------------	-------------	-------------	--------------	--------------	-----------------

NET Investigations / Activity

None.

Records / Parking Enforcement Activity

<u>Days</u>		<u>Parking Cites</u>		<u>Stored Vehicles</u>	
<u>Days</u>	Dayharsh	14		0	
	Sharma	0		0	
<u>Mids</u>	Campos	0		0	
	Urena	0		0	
<u>REGISTRANTS</u>		<u>290</u>	<u>11590</u>	<u>Arson</u>	<u>Gang</u>
None		0	0	0	0

Exhibit I

From: [Romero, Jaime G](#)
To: [Roberts, Bryan A](#)
Subject: Re: Zeleny Protest
Date: Wednesday, April 27, 2011 8:02:12 AM

No Sir, he has not.

As you know he has been sending correspondence back and forth between Stanford Attorneys and himself. This is par for course with him as he likes to engage in conversations and manipulate as much as possible satisfying his need for attention.

We continue to be in close contact with security from NEA and they will call my cell in the event Zeleny does show up.

Sent using BlackBerry

----- Original Message -----

From: Roberts, Bryan A
To: Romero, Jaime G
Sent: Wed Apr 27 07:53:16 2011
Subject: Zeleny Protest

Jaime,

Did he ever protest??

Bryan

Exhibit J

From: Brackett, Timothy M
To: Bertini, David C
Subject: Re: Zelanys
Date: Thursday, February 09, 2012 11:10:59 AM

No problem. Sharon is here now and we will work together on this.

Sent from my iPhone

On Feb 9, 2012, at 11:09 AM, "Bertini, David C" <dcbertini@menlopark.org> wrote:

> I agree. Lets keep someone there until we can resolve this....so who is working on the EPO? If they request it, we would fill out the application for it. I spoke to Sharon about that. Can you get with her about it?

>

> Thanks.

>

> Sent from my iPad

>

> On Feb 9, 2012, at 11:08 AM, "Brackett, Timothy M" <TMBrackett@menlopark.org> wrote:

>

>> I have spoken with reps associated with Rosewood and NEA. They are now in the process of working on an EPO. I will keep you posted with any additional info as it arises. I also don't feel comfortable with leaving Zeleny and his partner Wong without officers on scene.

>>

>> Thanks

>>

>> Tim

>>

>> Sent from my iPhone



MP000060

Exhibit K

From: O'Connor, Dani
To: Police Department
Subject: Meeting Minutes
Date: Monday, April 16, 2012 8:59:58 AM
Attachments: Management Staff Meeting Minutes 0412.docx

*Dani O'Connor
Administrative Assistant to the Chief of Police
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650-330-6326*

EXHIBIT 52
Chief Dave Bertini
3/19/2019
Heather J. Bautista
CSR 11600, RPR, CRR

MP000088

Management Staff Meeting Minutes

Tuesday, April 3, 2012

Attendance: Chief Roberts, Commander Burt, Commander Bertini, Sergeant Cowans, Sergeant Kaufman, Sergeant Dixon, Sergeant Romero, Sergeant Ortega, Sergeant, Paugh, Sergeant Soares, Sergeant Brackett, Susie Eldred, Charlie Manning, Nicole Acker, Meg Nee, Dani O'Connor

Chief Roberts:

Welcome Meg Nee who comes to us from Housing and will be taking over the budgeting and finance duties as Management Analyst.

Commander Bertini:

Overtime:

We are currently over budget through February. Overtime was reduced from \$779K to \$739K with the loss of RDA. Sergeants should know why officers are working overtime and approve the overtime before it is worked. Consistently, officers are working overtime to write reports which should take place during an officer's regular shift over the course of their work week.

Transients:

There was a recent meeting that took place with library staff members regarding the problem of transients using their facilities to bathe and sometimes sleep after hours. This has been a common problem for the library staff however they have been resistant to calling the police in the past so as not to inconvenience our officers. They have been advised to call when such incidents take place and they have issues with these individuals. Officers are to record information taken on the subjects while making contact so it can be forwarded to Officer Byars for CIT purposes.

Commander Burt/Sergeant Dixon:

Vehicle Stops:

Officers should make a concerted effort to explain the reason / violation necessitating the stop to the violator during each contact. While there is no legal requirement to do so it is a best practice.

In addition, officers should also document the reason for the stop in the notes section prior to going 10-8. Simply checking "warned" is not sufficient enough when an individual comes in regarding a complaint they have related to a vehicle stop.

Digital audio recorders should be recording from the initial contact to the conclusion of an event. Often times the entire stop is not being recorded resulting in an incomplete reference source. Officers are expected to record the stop in its entirety.

Digital Audio Recorders:

There will be no longer be any latitude given to officers regarding digital recordings. There have been too many issues concerning recordings being cut-off or not started at all during an interaction as well as instances when contact or witness statements have not been recorded during canvases. Officers are required to record contacts taking place in the field. Sergeants are to review policy 450 with your teams to ensure the proper use of digital recorders.

Commander Burt:

Penal Code 632 & 633:

When having a conversation/interview with an individual, no recording should take place unless the other party is aware. Citizen complaints do not fall under the same guidelines as criminal investigations and should not be recorded unless the individual being interviewed knows they are being recorded.

Sergeant Ortega:

FTO Update:

Officer Brazier will enter Phase II with Officer Simpson in the next two weeks.

Sergeant Paugh:

Occupy Symposium Overview:

Several take away' s which included the following:

- Occupy protestors are communicating via Twitter and Facebook
- There are several instances when officers are being recognized by means of social media. Do not post job related information on your personal pages.
- Protestors will change tactics based on what they see law enforcement doing
- Officers are changing their tactics / working in smaller groups
- Officers need to have a plan for these events instead of just reacting to the situation
- Batons and less lethal are not to be implemented to clear crowds, they are only to be used to affect an arrest
- There has been poor report writing and poor chain of custody resulting in fewer prosecutions
- There are times when it is unknown who the arresting officer was. Take a photo of the arresting officer with the subject being arrested for later reference

- Give unlawful assembly announcement allowing time parameters for peaceful protestors to clear the area
- Gigapixle – Panoramic photography allows for excellent quality when trying to locate individuals in large crowds
- Tactical Police Tables – iPhone/iPad application allowing sergeants to re-create perimeter of a scene using aerial satellite photos and specific police related icons that can be moved as new positions are assigned and officers arrive on scene to a critical incident.

Beat Issues:

Beat One

Sergeant Brackett:

Burglaries are not concentrated in any specific area of beat one. 70% of the burglaries taking place are in the early morning or afternoon hours that coincide with the time that j's would be walking to or from school.

Beat Two

Sergeant Paugh:

Burglaries are very wide spread with many non-forced entry style burglaries indicating many open doors and windows. Homes that have been burglarized have had high fences and overgrown bushes. The CPTED program should help to address some of these issues once it is regularly utilized. Neighboring communities seem to have success using their public personnel resources as the eyes and ears of their neighborhoods to combat crime.

All sergeants should have keys to Flood School.

Mike's Café is hosting private parties however; they have not completed the permit process. There have been recent underage drinking incidents and DUI's related to the establishment.

Action Item: Sgt. Paugh to follow-up with city staff regarding permit.

Beat Three

Sergeant Soares:

Officers have been assigned specific duties to combat crime in the area. Assignments include undercover details, probation searches, working with homeowners to record serial numbers, working with parole, working with surrounding agencies to identify common subjects, working to open dialog with those within the community, working with schools to

list truants, and attending neighborhood watch meetings. As weather improves, bicycle officers will also be utilized.

Recently, there has been a rise in members of the Yellow Tape Gang aligning with local Norteno's. GTF has been advised.

Residential Burglary Reduction Plan:

1. Due date of plan implementation sMay 1st.
2. Led by Commander Bertini

Each Beat Commander will be responsible for a side of the crime triangle:

Brackett – Location

Paugh – Victim

Soares – Suspect

This model can be used for any crime or problem on an officer's beat.

Officer Poirier is overseeing the CPTED (Crime Prevention through Environmental Design) program. Currently there is a checklist being created for all officers to complete with a resident or homeowner that has been burglarized. The checklist is meant to provide educational information preventing additional break-ins.

Department goals and strategies were reviewed. Most goals are on schedule.

Roundtable:

Commander Bertini:

Inebriate Task Force:

Effective April 2, 2012, Fire, AMR, and Police should be dispatched to all individuals who are in a public place and inebriated. The officer will complete San Mateo County Arrest Report/Booking Sheet. The Personal Data Section should be completed depending on the degree of intoxication of the individual. It will be important to complete the "Arresting Officer and Agency Section" and place the phone number of the department in the comments section. The Booking Sheet will be given to the American Medical Response crew who will transport the individual to the nearest hospital.

Once the individual is functionally sober (still intoxicated but able to walk and talk) and cleared by the E.D. doctor, the arresting agency will be called back to the hospital to take the individual back into custody and transport that individual either to First Chance or the jail. The hospital will give the transporting officer a Medical Clearance Form/Discharge Instructions ready for the officer of the arresting agency.

iPad beta testing is going well.

Action Item: Issue an iPad to a patrol sergeant.

This year's Torch Run will take place on June 15th.

Nicole Acker:

Training:

CPR/First Aid training will take place at fire station #77 on Chilco. Everyone has been signed up for their respective training dates and will be emailed as their training date nears.

SLI applications are currently being accepted until April 27th.

Action item: Sergeant's Dixon, Paugh and Ortega to apply.

Briefing training will be conducted for the following topics:

- Vehicle pursuit April 12th
- Human trafficking April 19th
- Temporary holding facility April 30th

Upcoming training:

- Domestic violence update
- Legal update
- CPTED

Sergeant Soares:

Officers Neumann, Venzon and Adair have just completed training with the Ca. Gang Investigators Assoc.

Officers Mendoza and Dixon are now providing testimony for gang enhancement.

Sergeant Kaufman:

Michael Zeleny was the topic of a recent meeting with Mark Weiss of the SMSO however, there seems to be no firm solution to ending his protest. Ken James, Police Chief of Emeryville, recently met with a legislative committee regarding open carry and the prohibition of long guns as well as hand guns. A photo of Michael Zeleny was prominently featured during the committee meeting which seemed to have a resounding impact on the participants.

Sergeant Paugh:

Firearms training will take place in May. There will be an open shoot and further information will be provided by Sergeant Paugh. For those interested in rifle training, please submit a letter of interest to Sergeant Paugh.

Susie Eldred:

Firearms are being taken as evidence however; they are not submitted with sufficient information to enter them into CLETS. Officers must complete the detailed information on the "Firearms" tab (tab two of the RIMS Property entry). Sergeants need to be certain the AFS entry is attached prior to approving the case.

Vehicle computers are required to be updated by officers in order to avoid using outdated codes.

Sergeant Romero:

When approving cases or supplements, sergeants are required to check the box "forward to investigations" if further investigation is necessary. Checking this box automatically forwards the case to Sergeant Romero.

Commander Burt:**Policy Updates:**

It was recently discovered that policy updates are not always added to the binders leading command staff to believe that officers are likely using the policy manual on the police department intranet. In the future, binders will only be provided for management staff. The summary sheets will be given to sergeants who will review the new policies with their teams.

Exhibit L

Bertini, David C

From: Roberts, Bryan A
Sent: Monday, October 24, 2011 5:31 PM
To: Bertini, David C
Subject: FW: Zeleny

This is a long story with a lot of history, but very touchy and political. Sgt Romero and Kaufman are well versed.

From: Kaufman, Sharon A
Sent: Friday, October 21, 2011 4:54 PM
To: Roberts, Bryan A
Cc: Romero, Jaime G
Subject: Zeleny

NEA Rosewood

10/31/11

Chief,

I met with several people this morning on the forecasted upcoming visit of Mr. Zeleny at NEA properties. Present were members of Stanford Properties, the Rosewood Hotel and Dan Siegel.

In a nutshell the judgment of the court gave specific instructions as to where Mr. Zeleny was and was not allowed. The Stay Away Letter issued to him by Stanford Properties last year, (which he acknowledged via email) essentially prevents him from all other areas on the property. His protest area will be the tiny public easement area that borders Sand Hill Rd and he will not be able to venture from that.

It was an understanding that the police department could not staff an overtime person indefinitely and both Rosewood and NEA were pursuing having their own on site security be vigilant in looking out for his arrival.

We did agree that when and if he shows up that a representative from the police department will meet with him and reiterate what the parameters are in regards to his protest. Personally, I have no idea where he intends to park his vehicle or any others that might decide to join him. Included in the discussion will be the re-affirmation of the stay away letter issued to him last year. In that letter it specifically states that if he ventures onto the property that he could possibly be subject to arrest for trespass.

We further discussed that if he does ignore the order and come onto the property that the act is somehow documented through recorded contact or a photograph of him on the grounds. Dan was in agreement it would fit the criteria for a cite and release, and he was going to telephone Morris Maya with the D.A. office on Tuesday to give him a heads up and get the D.A.'s position on the matter.

It was explained that he can have banners and signs as long as whatever he does with them does not impede vehicular, bicycle or pedestrian traffic.

Stanford believes that he might try something to push them to interact with him. They feel he will try to do something to draw them into a lawsuit and they are urging their people to not engage.

Please let me know if there is anything further you would like me to provide, as of right now all parties are informed and a good game plan is in place.

Sergeant Sharon Kaufman
Traffic Sergeant

*SPR
OPERATIONS*

Menlo Park Police Department
• (650)-330-6343
sakaufman@menlopark.org

Exhibit M

First Amendment Assemblies

467.1 PURPOSE AND SCOPE

This policy provides guidance for responding to public assemblies or demonstrations.

467.2 POLICY

The Menlo Park Police Department respects the rights of people to peaceably assemble. It is the policy of this department not to unreasonably interfere with, harass, intimidate or discriminate against persons engaged in the lawful exercise of their rights, while also preserving the peace, protecting life and preventing the destruction of property.

467.3 GENERAL CONSIDERATIONS

Individuals or groups present on the public way, such as public facilities, streets or walkways, generally have the right to assemble, rally, demonstrate, protest or otherwise express their views and opinions through varying forms of communication, including the distribution of printed matter. These rights may be limited by laws or ordinances regulating such matters as the obstruction of individual or vehicle access or egress, trespass, noise, picketing, distribution of handbills and leafleting, and loitering. However, officers shall not take action or fail to take action based on the opinions being expressed.

Participant behavior during a demonstration or other public assembly can vary. This may include, but is not limited to:

- Lawful, constitutionally protected actions and speech.
- Civil disobedience (typically involving minor criminal acts).
- Rioting.

All of these behaviors may be present during the same event. Therefore, it is imperative that law enforcement actions are measured and appropriate for the behaviors officers may encounter. This is particularly critical if force is being used. Adaptable strategies and tactics are essential. The purpose of a law enforcement presence at the scene of public assemblies and demonstrations should be to preserve the peace, to protect life and prevent the destruction of property.

Officers should not:

- Engage in assembly or demonstration-related discussion with participants.
- Harass, confront or intimidate participants.
- Seize the cameras, cell phones or materials of participants or observers unless an officer is placing a person under lawful arrest.

Supervisors should continually observe department members under their commands to ensure that members' interaction with participants and their response to crowd dynamics is appropriate.

First Amendment Assemblies

467.3.1 PHOTOGRAPHS AND VIDEO RECORDINGS

Photographs and video recording, when appropriate, can serve a number of purposes, including support of criminal prosecutions by documenting criminal acts; assistance in evaluating department performance; serving as training material; recording the use of dispersal orders; and facilitating a response to allegations of improper law enforcement conduct.

Photographs and videos will not be used or retained for the sole purpose of collecting or maintaining information about the political, religious or social views of associations, or the activities of any individual, group, association, organization, corporation, business or partnership, unless such information directly relates to an investigation of criminal activities and there is reasonable suspicion that the subject of the information is involved in criminal conduct.

467.4 UNPLANNED EVENTS

When responding to an unplanned or spontaneous public gathering, the first responding officer should conduct an assessment of conditions, including, but not limited to, the following:

- Location
- Number of participants
- Apparent purpose of the event
- Leadership (whether it is apparent and/or whether it is effective)
- Any initial indicators of unlawful or disruptive activity
- Indicators that lawful use of public facilities, streets or walkways will be impacted
- Ability and/or need to continue monitoring the incident

Initial assessment information should be promptly communicated to the Communications Center, and the assignment of a supervisor should be requested. Additional resources should be requested as appropriate. The responding supervisor shall assume command of the incident until command is expressly assumed by another, and the assumption of command is communicated to the involved members. A clearly defined command structure that is consistent with the Incident Command System (ICS) should be established as resources are deployed.

467.5 PLANNED EVENT PREPARATION

For planned events, comprehensive, incident-specific operational plans should be developed. The ICS should be considered for such events.

467.5.1 INFORMATION GATHERING AND ASSESSMENT

In order to properly assess the potential impact of a public assembly or demonstration on public safety and order, relevant information should be collected and vetted. This may include:

- Information obtained from outreach to group organizers or leaders.
- Information about past and potential unlawful conduct associated with the event or similar events.

First Amendment Assemblies

- The potential time, duration, scope and type of planned activities.
- Any other information related to the goal of providing a balanced response to criminal activity and the protection of public safety interests.

Information should be obtained in a transparent manner, and the sources documented. Relevant information should be communicated to the appropriate parties in a timely manner.

Information will be obtained in a lawful manner and will not be based solely on the purpose or content of the assembly or demonstration, or the race, ethnicity, national origin or religion of the participants (or any other characteristic that is unrelated to criminal conduct or the identification of a criminal subject).

467.5.2 OPERATIONAL PLANS

An operational planning team with responsibility for event planning and management should be established. The planning team should develop an operational plan for the event.

The operational plan will minimally provide for:

- (a) Command assignments, chain of command structure, roles and responsibilities.
- (b) Staffing and resource allocation.
- (c) Management of criminal investigations.
- (d) Designation of uniform of the day and related safety equipment (e.g., helmets, shields).
- (e) Deployment of specialized resources.
- (f) Event communications and interoperability in a multijurisdictional event.
- (g) Liaison with demonstration leaders and external agencies.
- (h) Liaison with City government and legal staff.
- (i) Media relations.
- (j) Logistics: food, fuel, replacement equipment, duty hours, relief and transportation.
- (k) Traffic management plans.
- (l) First aid and emergency medical service provider availability.
- (m) Prisoner transport and detention.
- (n) Review of policies regarding public assemblies and use of force in crowd control.
- (o) Parameters for declaring an unlawful assembly.
- (p) Arrest protocol, including management of mass arrests.
- (q) Protocol for recording information flow and decisions.
- (r) Rules of engagement, including rules of conduct, protocols for field force extraction and arrests, and any authorization required for the use of force.
- (s) Protocol for handling complaints during the event.
- (t) Parameters for the use of body-worn cameras and other portable recording devices.

First Amendment Assemblies

467.5.3 MUTUAL AID AND EXTERNAL RESOURCES

The magnitude and anticipated duration of an event may necessitate interagency cooperation and coordination. The assigned Incident Commander should ensure that any required memorandums of understanding or other agreements are properly executed, and that any anticipated mutual aid is requested and facilitated (see the Mutual Aid and Outside Agency Assistance Policy).

467.6 UNLAWFUL ASSEMBLY DISPERSAL ORDERS

If a public gathering or demonstration remains peaceful and nonviolent, and there is no reasonably imminent threat to persons or property, the Incident Commander should generally authorize continued monitoring of the event.

Should the Incident Commander make a determination that public safety is presently or is about to be jeopardized, he/she or the authorized designee should attempt to verbally persuade event organizers or participants to disperse of their own accord. Warnings and advisements may be communicated through established communications links with leaders and/or participants or to the group.

When initial attempts at verbal persuasion are unsuccessful, the Incident Commander or the authorized designee should make a clear standardized announcement to the gathering that the event is an unlawful assembly, and should order the dispersal of the participants. The announcement should be communicated by whatever methods are reasonably available to ensure that the content of the message is clear and that it has been heard by the participants. The announcement should be amplified, made in different languages as appropriate, made from multiple locations in the affected area and documented by audio and video. The announcement should provide information about what law enforcement actions will take place if illegal behavior continues and should identify routes for egress. A reasonable time to disperse should be allowed following a dispersal order.

467.7 USE OF FORCE

Use of force is governed by current department policy and applicable law (see the Use of Force, Handcuffing and Restraints, Control Devices and Techniques, and Conducted Energy Device policies).

Individuals refusing to comply with lawful orders (e.g., nonviolent refusal to disperse) should be given a clear verbal warning and a reasonable opportunity to comply. If an individual refuses to comply with lawful orders, the Incident Commander shall evaluate the type of resistance and adopt a reasonable response in order to accomplish the law enforcement mission (such as dispersal or arrest of those acting in violation of the law). Control devices and TASER® devices should be considered only when the participants' conduct reasonably appears to present the potential to harm officers, themselves or others, or will result in substantial property loss or damage (see the Control Devices and Techniques and the Conducted Energy Device policies).

First Amendment Assemblies

Force or control devices, including oleoresin capsaicin (OC), should be directed toward individuals and not toward groups or crowds, unless specific individuals cannot reasonably be targeted due to extreme circumstances, such as a riotous crowd.

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report. The type of report required may depend on the nature of the incident.

467.8 ARRESTS

The Menlo Park Police Department should respond to unlawful behavior in a manner that is consistent with the operational plan. If practicable, warnings or advisements should be communicated prior to arrest.

Mass arrests should be employed only when alternate tactics and strategies have been, or reasonably appear likely to be, unsuccessful. Mass arrests shall only be undertaken upon the order of the Incident Commander or the authorized designee. There must be probable cause for each arrest.

If employed, mass arrest protocols should fully integrate:

- (a) Reasonable measures to address the safety of officers and arrestees.
- (b) Dedicated arrest, booking and report writing teams.
- (c) Timely access to medical care.
- (d) Timely access to legal resources.
- (e) Timely processing of arrestees.
- (f) Full accountability for arrestees and evidence.
- (g) Coordination and cooperation with the prosecuting authority, jail and courts (see the Cite and Release Policy).

467.9 MEDIA RELATIONS

The Public Information Officer should use all available avenues of communication, including press releases, briefings, press conferences and social media to maintain open channels of communication with media representatives and the public about the status and progress of the event, taking all opportunities to reassure the public about the professional management of the event (see the News Media Relations Policy).

467.10 DEMOBILIZATION

When appropriate, the Incident Commander or the authorized designee should implement a phased and orderly withdrawal of law enforcement resources. All relieved personnel should promptly complete any required reports, including use of force reports, and account for all issued equipment and vehicles to their supervisors prior to returning to normal operational duties.

First Amendment Assemblies

467.11 POST EVENT

The Incident Commander should designate a member to assemble full documentation of the event, to include the following:

- (a) Operational plan
- (b) Any incident logs
- (c) Any assignment logs
- (d) Vehicle, fuel, equipment and supply records
- (e) Incident, arrest, use of force, injury and property damage reports
- (f) Photographs, audio/video recordings, the Communications Center records/tapes
- (g) Media accounts (print and broadcast media)

467.11.1 AFTER-ACTION REPORTING

The Incident Commander should work with City legal counsel, as appropriate, to prepare a comprehensive after-action report of the event, explaining all incidents where force was used including the following:

- (a) Date, time and description of the event
- (b) Actions taken and outcomes (e.g., injuries, property damage, arrests)
- (c) Problems identified
- (d) Significant events
- (e) Recommendations for improvement; opportunities for training should be documented in a generic manner, without identifying individuals or specific incidents, facts or circumstances.

467.12 TRAINING

Department members should receive periodic training regarding this policy, as well as the dynamics of crowd control and incident management (Penal Code § 13514.5). The Department should, when practicable, train with its external and mutual aid partners.

Exhibit O

**MENLO PARK POLICE DEPARTMENT**

Page 1

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300
GENERAL CASE REPORTCase
12-1596

OFFENSES	Offenses	Description	Fel/Misd	Date Occurred	Time Occurred	Incident #		
	Info	General Information Case		05/24/2012	0935	1205240037		
				Date Reported	Time Reported			
				05/24/2012	0938			
				Related Cases				
				Date Printed	Time Printed	Printed By		
			01/28/2019	13:43:01	15159			
			Latitude	Longitude				
			0.000000	0.000000				
Location			Beat	Area	Disposition		Dispo Date	
Rosewood Sand Hill Resort And Sp, 2825 Sand Hill Rd, Menlo Park, CA 94025			1	30	Closed		05/24/2012	
Location Type		Location of Entry	Method of Entry	Point of Entry	Alarm System	Means of Attack (Robbery)		
	Reporting Party		Drivers License	Cell Phone		Email		
	Casey, Michael							
	Residence Address		Notified of Victim Rights	Residence Phone	DOB	Age	Sex	Race
	Business Name and Address			Business Phone	Height	Wt	Hair	Eyes
Assistance Rendered/Victim Disposition			Transporting Agency		Means of Attack (Assaults)			
Description of Injuries			Other Information					
	Party		Drivers License	Cell Phone		Email		
	Wong, David Kam Pui							
	Residence Address			Residence Phone	DOB	Age	Sex	Race
	San Francisco, CA				11/04/1963	48	M	
Business Name and Address			Business Phone	Height	Wt	Hair	Eyes	
San Francisco Sheriffs Office								
	Suspect Name			Action Taken		Charges		
	Residence Address			Residence Phone	DOB	Age	Sex	Race
	Business Name and Address			Business Phone	Height	Wt	Hair	Eyes
Identifying Features			Cell Phone	Drivers License		Arrest Number		
Aliases			Val Damaged					
VEHICLES	Status		Vehicle Make and Model		License/State		VIN	
	Involved Involved		2004 Silver/Aluminum Hond 2011 Chev		5KNF700 CA 6SOM386 CA		1HGEM22124L082377 1GNSCJE02BR387381	
OFFICERS	Prepared By		Date	Assisted By		Approved By		Date
	14048 - Byars, Felicia		05/24/2012			14757 - Brackett, Tim		05/25/2012
Routed To		Date	Routed To		Date	Notes		
Sent to DA Kevin Collins		06/28/2012						

CONTROLLED DOCUMENT - MPPD**EXHIBIT**

MP00

0260

**MENLO PARK POLICE DEPARTMENT**

Page 2

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300Case
12-1596**GENERAL CASE REPORT**

Party Zeleny, Michael	Drivers License C4374887 CA	Cell Phone	Email			
Residence Address 7576 Willow Glen Rd, Los Angeles, CA 90046		Residence Phone 310-979-8700	DOB 02/26/1958	Age 54	Sex M	Race W
Business Name and Address		Business Phone	Height 5' 11"	Wt 185	Hair BLK	Eyes HZL

CONTROLLED DOCUMENT - MPPD

MP001859

**MENLO PARK POLICE DEPARTMENT**

Page 4

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

NARRATIVE

12-1596

SYNOPSIS:

Party Michael Zeleny arrived at the corner of 2825 Sand Hill Road to protest outside the business of NEA.

NARRATIVE:

On 05-24-12 I responded to assist with an area and welfare check at the business properties of Stanford Management where Party Michael Zeleny set up a visual protest in front of 2825 Sand Hill Road.

While Officer Poirier was conducting check of the weapons in the possession of Zeleny I made contact and began talking with Zeleny. The conversation was recorded and booked into the Menlo Park secure server. A synopsis of the conversation follows:

Zeleny spoke about the various cameras he has and explained he is currently attempting to learn cinematography but prefers still shots. Zeleny has ordered a new tripod for the video camera he has to assist with capturing videos for production and placement on the internet.

Zeleny remarked that he recently moved to an apartment "down the street", pointing eastbound down Sand Hill, to "be near my friends." I asked Zeleny if this was an instance of "keep your friends close and your enemies closer?" Zeleny responded, "I don't like to the think that I have enemies" and went on to say, "I have no ill will towards anybody."

I asked Zeleny about the poster of a hand painted bear mixed in between the posters of the CEO's. Zeleny explained the bear represented an international symbol for pedophiles and suggested I conduct a Google search of "pedobear" and read the Wikipedia article on it. I asked Zeleny if he wrote the Wikipedia article himself and he replied, "No, I've been banned from Wikipedia."

Zeleny then began laughing and explained this was "why I have to develop my own social media...I don't uh, I don't play nice with others, you can see why." Zeleny did state he has been using Facebook a lot recently to communicate with others.

Zeleny also spoke about prior employment, explaining he worked for approximately 6 1/2 years at various locations. I asked Zeleny where he worked and he stated he worked for the University of Chicago which he quickly corrected to the University of Illinois, then BlueCross-Blue Shield when they were non-profit, as well as the Illinois Law Enforcement Commission, and Inference. Zeleny provided another location; however, I was unable to understand what he said. Later in the conversation, Zeleny explained he aided in the development of the CJIS software system around 1982 as well as automating police reports and incident reports.

While speaking with him, Zeleny stated he would be "taking the weekend off" while he spent the long holiday weekend with his girlfriend. Zeleny explained his girlfriend was completing

Prepared By:

14048 BYARS, FELICIA

Date:

05/24/2012

Approved By:

14757 BRACKETT, TIM

Date:

05/25/2012

CONTROLLED DOCUMENT - MPD

MP001861

**MENLO PARK POLICE DEPARTMENT**

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

NARRATIVE

Page 5

12-1596

her PhD exams tomorrow and they would spend the long holiday weekend together afterwards, but he was not sure if she was coming to Palo Alto or if he was going to Los Angeles to meet her.

We then talked about his educational background. Zeleny explained he went to UCLA and then Harvard. Zeleny stated he started a PhD program in Philosophy, but he insulted his department head after they fired his advisor. I pointed out to Zeleny I saw a pattern in his behavior. Zeleny chuckled and nodded his head in agreement.

I asked Zeleny what his girlfriend was going to do when she finished and he laughed as he stated he hoped she would support him. I then asked Zeleny if he was going to marry his girlfriend and he stated he wanted to, but she would not marry him "until I finished this." Zeleny explained he was getting death threats via the phone which worried his girlfriend. Zeleny first explained he carried weapons with him because of the death threats; then he corrected himself and expanded his comments explaining he became more concerned after his father was killed in a fire in Los Angeles.

Zeleny went onto spontaneously state, "I told these people this, apologize, say you have nothing to do with that and everything will be forgotten...but uh, he chose to flee the country instead," referring to Min Zhu.

I asked Zeleny, "What's the goal of all this?" Zeleny answered, "I want an apology...I'm kind of old fashioned." When I told Zeleny I understood that, he explained further, "the only problem with me is, in order to apologize, he would have to admit a crime." I pointed out to Zeleny in the justice system people have the ability to plea no-contest without having to admit to a crime. Zeleny rationalized that this occurs when the District Attorney makes a deal and Zeleny could not do that because he is not a District Attorney. I asked Zeleny to confirm he wanted someone to admit, "I'm guilty, but I'm sorry." Zeleny responded, "I'll take any kind of acknowledgement" and a rescinding of the "death sentence" he believes is against him.

Zeleny explained he was certain the death threats were coming from people hired by Min Zhu, which started when he and Zhu had a "business dispute." Zeleny explained he was able to verify this because one of the phone calls came from a person who forgot to block his caller id. I asked Zeleny if he filed a case with the police department. Zeleny explained he did and the case was on file in Los Angeles, but nothing was being done because the person involved was under the federal government witness protection program for testifying against KPMG in a federal tax fraud prosecution case.

Zeleny went onto to explain he was able to succeed one time when he was a victim of fraud, but most police departments turned him away citing it was a civil matter. Zeleny stated he went to several police departments before he was able to find someone who would file a

Prepared By:

14048 BYARS, FELICIA

Date:

05/24/2012

Approved By:

14757 BRACKETT, TIM

Date:

05/25/2012

CONTROLLED DOCUMENT - MPPD

MP001862



MENLO PARK POLICE DEPARTMENT

Page 6

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

NARRATIVE

12-1596

criminal fraud case. Zeleny explained the suspect pled guilty and received two years in his sentence and Zeleny walked away happy with the results and never filed a civil suit for damages and never contacted the suspect again.

I concluded my conversation with Zeleny and left the scene.

RECOMMENDATIONS:

This case is for information purposes only.

CONTROLLED DOCUMENT - MPPD

Prepared By:

14048 BYARS, FELICIA

Date:

05/24/2012

Approved By:

14757 BRACKETT, TIM

Date:

05/25/2012

MP001863

**MENLO PARK POLICE DEPARTMENT**

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

SUPPLEMENT 1

Page 7

12-1596

Supplemental Report:

On 05-24-2012, I responded to the 2800 block of Sandhill Rd to assist with this case. Upon arrival I saw Michael Zeleny, whom I recognized from previous contacts. I noted that Zeleny was wearing military style tactical clothing and equipment, including a ballistic helmet and vest, additionally he had a LRB (M1A style) rifle slung across his chest and a large fixed blade knife in a scabbard on his right hip. I made contact with Zeleny, and Sergeant Brackett arrived to assist.

I checked Zeleny's firearms, and obtained permission to search his belongings for additional firearms. Zeleny was compliant during my contact with him and notified me of the type, quantity and location of all of the firearms he had with him.

The firearms included

- 2, LRB rifles, each chambered in .308 cal, one with a standard wood stock, and the other with a synthetic tactical stock, a bipod and scope attached.
- 1, Winchester pump action 12 gauge shotgun.
- 1, Sig 9mm semi-automatic pistol
- 1, .357 Mag revolver
- 1, .45 ACP pump action pistol
- 1, 9mm semi-automatic pistol (with all markings in Farsi, of a Lugar style)

After running records checks on all the weapons (and contacting ATF regarding the weapon with Farsi markings) I found that all returned clear and or registered to Zeleny.

I then took a position across the street from Zeleny (parking lot at 2750 Sandhill) and observed him for some time. Approximately 90 minutes later, I saw a subject approach Zeleny and hand him a white "grocery" type plastic bag, and walk away. Moments later, I saw that same subject drive E/B on Sandhill Rd, stop his vehicle in front of Zeleny and get out of the vehicle and walk over to Zeleny. Zeleny then walked over to the vehicle and got into the driver's seat. I approached the area on foot and ran a records check on the vehicle (5KNF700).

MPPD Dispatch returned that the vehicle came back with confidential status, associated with San Francisco Sheriff's Office, to a David Wong.

Zeleny drove the vehicle E/B on Sandhill Rd, and I contacted the subject who had driven the vehicle to the scene and identified him by his California Driver's License (C0511776) as David Kam Pui Wong, the registered owner of the vehicle which Zeleny drove from the scene.

I asked Wong if he was associated with the SFSO, to which he replied yes. I asked Wong what his position was with the SFSO, and he informed me that he was a Deputy Sheriff. I asked Wong if he was armed, and he stated that he was not and that he was presently on Administrative Leave from SFSO. Wong refused to elaborate on why he was on Administrative Leave, but stated that he did not presently have the ability to carry a weapon concealed due to his status with SFSO.

Approximately 30 minutes later, Zeleny returned to the scene in Wong's vehicle. Zeleny exited the

Prepared By:

14592 POIRIER, JASON

Date:

05/25/2012

Approved By:

14757 BRACKETT, TIM

Date:

05/25/2012

CONTROLLED DOCUMENT - MPPD

MP001864

**MENLO PARK POLICE DEPARTMENT**

Page 8

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

SUPPLEMENT 1

12-1596

vehicle, and Wong drove the vehicle E/B from the scene.

I was later relieved by Officer Tommei, who observed a subject matching the description of Wong, drive an SUV up to the area where Zeleny had been demonstrating. Officer Tommei observed them load the SUV with Zeleny's items and drive away E/B on Sandhill Rd. Officer Tommei ran a record check on the vehicle that he saw (6SOM386) which returned to EAN Holding Group, which he knew to be a rental agency.

Recommendation:

I recommend this be attached to the main case file.

CONTROLLED DOCUMENT - MPPD**Prepared By:**

14592 POIRIER, JASON

Date:

05/25/2012

Approved By:

14757 BRACKETT, TIM

Date:

05/25/2012

MP001865

**MENLO PARK POLICE DEPARTMENT**

Page 9

701 LAUREL ST MENLO PARK, CA 94025 650-330-6300

SUPPLEMENT 2

12-1596

NARRATIVE:**Thursday May 24, 2012****0935 hrs****(Initial Call)**

I responded to the 2800 block of Sand Hill Rd, Rosewood Hotel, to assist with this investigation. Upon my arrival, I saw Michael Zeleny, whom I know from prior contacts speaking with Officer Poirier. Zeleny was wearing military tactical clothing and equipment. He had a ballistic helmet, vest and multiple weapons. (See Officer Poirier's supplemental report for more details regarding the weapons.) As Officer Poirier continued to speak with Zeleny, I took 4 photographs of Zeleny's weapons and later booked them into the Menlo Park Police Department secure media server.

I then directed Officer Poirier to take a position and watch Zeleny throughout the day to make sure Zeleny stays within the guidelines that have been expressed to him.

EVIDENCE:

The following items were booked into the Menlo Park Police Department secure media server:

- 4 digital photographs of Zeleny's firearms.

RECOMMENDATIONS:

Please attach this report to Officer Byars' original case, 12-1596.

CONTROLLED DOCUMENT - MPPD**Prepared By:**

14757 BRACKETT, TIM

Date:

05/25/2012

Approved By:

14437 PHU, PAUL

Date:

05/25/2012

MP001866

Exhibit P

**MENLO PARK POLICE DEPARTMENT**

Page 1

701 LAUREL ST Menlo Park, CA 94025 650-330-6300

#12-495

GENERAL CASE REPORT

Printed by 15022

Offenses Info	Description General Information Case	Fel/Misd	Date Occurred 02/09/12-02/10/12	Time Occurred 0920 - 1456	Date Printed 02/17/2012
			Date Reported 02/10/2012	Time Reported 1246	Time Printed 08:41:02
Related Cases					Incident # 120210034
Location New Enterprise Associates, 2855 Sand Hill Rd, Menlo Park, CA 94025		Beat 1	Area 30	Disposition Closed	Dispo Date 02/10/2012
Location Type Street	Location of Entry	Method of Entry	Point of Entry	Alarm System	Means of Attack (Robbery)
Reporting Party / Victim		Drivers License	Cell Phone	Email	
Residence Address		Residence Phone	DOB	Age	Sex Race
Business Name and Address		Business Phone	Height	Wt	Hair Eyes
Assistance Rendered/Victim Disposition		Transporting Agency	Means of Attack (Assaults)		
Description of Injuries		Other Information			
PARTY Zeleny, Michael		Drivers License C4374887 CA	Cell Phone	Email	
Residence Address 7576 Willow Glen Rd, Los Angeles		Residence Phone 310-979-8700	DOB 02/26/1958	Age 53	Sex M Race W
Business Name and Address		Business Phone	Height 5'11"	Wt 185	Hair BLK Eyes HZL
Suspect Name		Action Taken	Charges		
Residence Address		Cell Phone	DOB	Age	Sex Race
Business Name and Address		Business Phone	Height	Wt	Hair Eyes
Identifying Features		Residence Phone	Drivers License	Arrest Number	
Status	Vehicle Make and Model		License/State	Vehicle Type	
No.	Status/Disposition	Property Description	Value	Val Recovered	Val Damaged
Solvability Factors					
Prepared By 13938 - Trask, Victoria		Date 02/10/2012	Assisted By		Approved By 14757 - Brackett, Tim
Routed To		Date	Routed To	Date	Notes

EXHIBIT 49

Chief Dave Bertini

3/19/2019

Heather J. Bautista
CSR 11600, RPR, CRR

MP000151

**MENLO PARK POLICE DEPARTMENT**

Page 2

701 LAUREL ST Menlo Park, CA 94025 650-330-6300

#12-495

GENERAL CASE REPORT

Printed by 15022

PARTY Lonergan, Frank Xavier	Drivers License C4901819 CA	Cell Phone	Email			
Residence Address 460 Summit Springs Rd, Woodside, CA 94062	Residence Phone	DOB 10/29/1968	Age 43	Sex M	Race W	
Business Name and Address	Business Phone	Height 5'10"	Wt 175	Hair BRO	Eyes BLU	
PARTY Mitchell, Paul	Drivers License N9696725 CA	Cell Phone	Email			
Residence Address 1315 Alma Ave #237, Walnut Creek, CA 94596	Residence Phone	DOB 12/25/1962	Age 49	Sex M	Race	
Business Name and Address	Business Phone	Height 6'1"	Wt 190	Hair BRO	Eyes HZL	
PARTY Wong, Michael	Drivers License A9034771	Cell Phone	Email			
Residence Address W El Repetto Dr, Monterey Park, CA 91754	Residence Phone	DOB 01/03/1963	Age 49	Sex M	Race A	
Business Name and Address	Business Phone	Height 5'10"	Wt 180	Hair BLK	Eyes BRN	

MP000152

**MENLO PARK POLICE DEPARTMENT**

Page 3

701 LAUREL ST Menlo Park, CA 94025 650-330-6300

12-495

NARRATIVE**SYNOPSIS:**

Subjects Michael Zeleny and Michael Wong stood on the corner of Sand Hill Rd. and the entrance to the 2800 block of Sand Hill Rd in protest of an employee of New Enterprise Associates (NEA). Both subjects donned M1A rifles, 8 magazines full of rifle ammunition (approximately 80 rounds), bullet proof vests and military style looking clothing. Zeleny used his long-lens camera to take photographs of drivers and passengers entering the driveway of the 2800 block of Sand Hill Rd, unknowing if they were associated with NEA or other companies occupying the business park area. The subjects displayed three (3) large posters of pictures of NEA employees and of a subject they accuse of being a child rapist. They occupied the two south corners of the driveway entrance to 2800 block of Sand Hill Rd. This case was taken for informational purposes.

NARRATIVE:

On 02/09/12, Officer Poirier and I were dispatched to the 2800 block of Sand Hill Rd. for the report of two subjects protesting with rifles. Upon our arrival, we saw two individuals dressed in tan military clothing with rifles slung over their shoulders.

The subjects provided their California driver's licenses that identified them as Michael Zeleny and Michael Wong. The subjects allowed us to inspect their weapons to ensure they were unloaded. Officer Poirier inspected both rifles and confirmed the rifles were unloaded. Both subjects had magazines strapped to their bullet proof vests. Zeleny had six (6) magazines and Wong had two (2).

I reminded Zeleny he was only allowed to stay on the street corners and none of his signs were allowed on the Rosewood Hotel property or anywhere else within the private property of the businesses within the 2700 and 2800 blocks of Sand Hill Rd. Zeleny acknowledged my request and stated he understood. A few hours later staff from NEA provided Zeleny with a stay away order and advised him of the areas where he was allowed to protest. Zeleny acknowledged the stay away order.

Due to the ammunition being on Zeleny's person along with the unloaded rifle on his person and for the safety of the public, officers stayed on site observing Zeleny's actions.

During the day Wong had been picked up in a cream colored GMC SUV with license plate 4SOL455. The vehicle was registered to Enterprise Rental Car Company. Wong returned several hours later riding a fold up bicycle. A few hours after that, a silver Porsche with license plate 4KDS965 dropped off food for the two subjects.

Officer Poirier followed the vehicle until it stopped at the Stanford Shopping Mall. Officer Poirier told me he parked a few spaces away from the vehicle and then walked up to the driver asking if he could speak with him. The driver willingly provided his California driver's license to Officer Poirier which identified himself as Paul Mitchell out of Walnut Creek. Mitchell freely admitted he was helping Zeleny's cause although he doesn't feel as strongly about the topic as Zeleny does. He told Officer Poirier they were staying at the Quality Inn in Palo Alto, but he didn't know how long they were staying. Mitchell told Officer Poirier he feels Zeleny doesn't trust him with that information. Mitchell told Officer Poirier he has known Zeleny since 1987 when they worked together. Officer Poirier told me Mitchell was being vague with information, but still being truthful when answering Officer Poirier's questions. The silver Porsche came back later and picked up Wong.

Prepared By:

13938 TRASK, VICTORIA

Date:

02/10/2012

Approved By:

14757 BRACKETT, TIM

Date:

02/11/2012

MP000153

**MENLO PARK POLICE DEPARTMENT**

Page 4

701 LAUREL ST Menlo Park, CA 94025 650-330-6300

12-495

NARRATIVE

At approximately, 1547 hours the cream colored GMC from earlier in the day arrived, driven by Wong, and picked up Zeleny and his belongings. The silver Porsche was parked across the street in the business complex parking lot area observing Wong and Zeleny as they loaded their vehicle. Around the same time the silver Porsche had arrived, a black Porsche was seen driving around the business complex across the street from where Zeleny was protesting. It appeared the black Porsche was possibly related. Once Zeleny and Wong had the GMC packed with their belongings, the black Porsche left the business complex, followed by the silver Porsche. Wong, driving the cream GMC, pulled into the driveway of 2800 Sand Hill Rd. made a U-turn then went back out to Sand Hill Rd. and proceeded eastbound on Sand Hill Rd.

A Menlo Park Police undercover unit followed the cream GMC to the Quality Inn in Palo Alto.

The following day at approximately 1246 hours, Zeleny and Wong arrived at Sand Hill Rd. Officer Igno was already on site anticipating their arrival. Sergeant Brackett and Officer Igno inspected both subject's weapons again to ensure they were both unloaded. Both subjects were wearing the same clothing as the previous day. I arrived at 1315 hours. Zeleny told Sergeant Brackett he was planning on coming back in a few days and then would be staying up in the bay area indefinitely.

At approximately 1447 hours the cream GMC arrived to pick up Wong and Zeleny. Around the same time I noticed the black Porsche arrived and was again across the street in the business park parking lot from Zeleny and Wong. The black Porsche pulled into the left turn lane to prepare to pull onto eastbound Sand Hill Rd. The vehicle then backed up and pulled alongside the mailboxes in the business park parking lot area. I attempted to get a plate of the vehicle; however, it was missing a front plate. As Officer Igno watched the vehicle I pulled out to go across the street to get a plate of the vehicle. The driver of the black Porsche got out of his vehicle near the mailboxes and then got back inside his vehicle and when his light turned green to turn he left the business park driveway.

I followed the vehicle and made an enforcement stop, for no front plate, at Sand Hill Rd. and Branner Dr. The driver identified himself as Frank Lonergan with his California driver's license. I asked him if he was associated with Zeleny. He stated he didn't know who that guy was. He told me he has a business in the 2800 block of Sand Hill Rd. and that was where he was coming from.

While I was on my traffic stop Officer Igno continued to watch Zeleny. Officer Igno told me Zeleny watched me leave and follow the black Porsche. Zeleny made a U-turn and headed back towards interstate 280 and has not been scene since.

RECOMMENDATION:

This case was taken for informational purposes.

Prepared By:

13938 TRASK, VICTORIA

Date:

02/10/2012

Approved By:

14757 BRACKETT, TIM

Date:

02/11/2012

MP000154

Exhibit Q

From: [Nicolas A. Flegel](#)
To: [Michael Zeleny](#)
Cc: [Toews, Ivan J](#); [Harada, Jelena V](#); [McClure, William](#); [Bertini, David C](#); [McIntyre, Alex D](#); [Subrah Ivar](#); [Scott Sandell](#); dwa@agglaw.com
Subject: RE: [BULK] Re: Notice re Menlo Park City Council Decision
Date: Thursday, December 07, 2017 4:07:58 PM

Dear Mr. Zeleny,

I am writing in response to your email of November 27th. In response to the first paragraph of your email, please be aware that the City of Menlo Park requires a special event permit if you are proposing to put on an entertainment event on public property or requires a film permit if you intend to put on a film production on public property. Without a special event permit or a film permit, it is inappropriate and illegal for you to possess guns as part of your entertainment event/film production. To remind you, you initially sought a Special Events Permit per your email in July 2015, proposing to put on an entertainment event in the median strip of Sand Hill Road near the entrances and exits of Interstate 280. That application was denied by staff and ultimately the City Manager, and the reasons for the denial were outlined in the letter dated September 12, 2016, signed by City Manager Alex D. McIntyre.

You appealed the City Manager's denial of your application to the City Council, which upheld the City Manager's decision. You received notice from the City Clerk on September 5, 2017, confirming that on August 29, 2017, the Menlo Park City Council upheld staff's administrative decision to deny your Special Events Permit application. That letter notified you that any challenge to the council's decision in the appropriate court of competent jurisdiction must be made within ninety (90) days of August 29, 2017, pursuant to California Code of Civil Procedure Section 1094.6, unless a shorter time is required by State or Federal law, and that if you believed the City Council's decision involved speech or expressive conduct entitled to protection by the First Amendment, any petition must have been served on the City of Menlo Park no later than twenty-one (21) calendar days following the City Council's decision of August 29, 2017, pursuant to California Code of Civil Procedure Section 1094.8.

Thereafter, on September 7th, you sent an email asking if your special event application could be reconsidered as a film permit. You were informed you could proceed with a film permit application, and you elected to proceed with a film permit application, which you submitted on October 6, 2017. It is your film permit application that is before us now. Staff, and then I, responded to your film permit application as we are attempting to process your application and trying to work with you in good faith to understand what you are proposing so you can put on your film production. However, this requires that the City is satisfied that filming occur in a safe and acceptable way. As I noted before, your application is an unusual one, and implicates numerous public safety considerations due to the props you have indicated you want to use while filming alongside a busy arterial roadway.

With respect to your second paragraph, at no time has the City of Menlo Park tried to regulate your content. If you wish to protest/promote a message regarding New Enterprises Associates, the City has no stance on that issue. However, it is essential that the City understand what event or film you are trying to put on so it can determine what if any impacts must be considered for traffic control and public safety. To that end, it is necessary for you to respond to the specific questions I posed to



MP001381

you in my email dated November 22, 2017, i.e. understanding information regarding the site set-up, participants, cameraman, display to be utilized, etc. Again, this is crucial for staff to have this information in order to analyze the impacts on the public right of way, traffic control, and public safety issues. This is why we have applicants submit film applications; so these details can be reviewed and a plan put in place. To that end, thank you for confirming that you will not be brandishing weapons at passing motorists, pedestrians or cyclists in order to incite a reaction.

At this point your application is incomplete because the City cannot analyze the public safety concerns, and if you wish to proceed with the film permit application please respond in detail to my email of November 22nd. If your goal, however, as stated in your email is to "rid your community of individual and corporate sponsors and enablers of incestuous child rape over the coming holidays," you may lawfully protest along Sand Hill Road without guns, as staff and the City Council informed you. Thank you for your attention to this matter.

Nicolas A. Flegel
Jorgenson, Siegel, McClure & Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
Tel: (650) 324-9300
Fax: (650) 324-0227

From: Michael Zeleny [mailto:michael@massmeans.com]
Sent: Monday, November 27, 2017 2:37 PM
To: Nicolas A. Flegel <naf@jsmf.com>
Cc: Toews, Ivan J <IJToews@menlopark.org>; Harada, Jelena V <jvharada@menlopark.org>; William L. McClure <wlm@jsmf.com>; Bertini, David C <dcbertini@menlopark.org>; McIntyre, Alex D <admcintyre@menlopark.org>; Subrah Iyar <Subrah.Iyar@webex.com>; Scott Sandell <ssandell@nea.com>; dwa@agzlaw.com
Subject: [BULK] Re: Notice re Menlo Park City Council Decision

Dear Mr Flegel,

Thank you for conceding that the exemptions to California Penal Code §§ 25400, 26350, and 26400, as found in §§ 25510, 26350, and 26405, allow me to possess unloaded guns to the extent that I am using them as part of a film production. Please note that the aforementioned statutes in no way require that said film production must proceed subject to a permit from any authority whatsoever. Please note as well that the same exemptions apply to authorized participants in an entertainment event, whether or not that event is recognized as such by any official body. In short, the statutory exemptions apply whether or not the City recognizes or authorizes me as an entertainer or a filmmaker. A failure to obtain such recognition or authorization would not expose me, or any other participant in my entertainment event or film production that I choose to authorize, to sanctions under P.C. §§ 25400, 26350, and 26400 for possessing unloaded guns, to the extent that we are using them as part of my event or a production.

This point brings us to your ongoing attempt at content regulation. In *Linmark Associates, Inc.*

v. Township of Willingboro, 431 U.S. 85 (1977), the U.S. Supreme Court has ruled that “laws regulating the time, place or manner of speech stand on a different footing than laws prohibiting speech altogether”. Time, place, and manner restrictions on speech are constitutional if (1) they are content neutral; (2) they are narrowly tailored to serve a governmental interest; and (3) they leave open ample alternative means of expression. As to the last criterion, my proposed expression allows for no alternative means outside of the immediate vicinity of the individual and corporate sponsors and enablers of daughter rapist Min Zhu. If I cannot designate their lair by ostension, my intent to expose them fails. Hence the proposed location of my performance, on grounds that in no way encumber or disrupt automotive or pedestrian traffic. As stated before, the location I propose the exact same one I used in my previous appearance. Given that it was acceptable to the City then, the burden falls on you to explain your reasons for deeming it otherwise now, should you choose to do so.

Staying within the bounds of content neutrality, you have no authority to question my choice of collaborators or deployment of equipment, provided that I break no laws in either matter. Nor do you have the authority to hold forth on what “would in any way be necessary for [my] film production”. Outside of exigent circumstances, my necessity is none of your business. Pursuant to the aforementioned statutes, your authority begins and ends at ensuring that my firearms remain unloaded. According to *People v. Clark* (1996), 45 Cal. App. 4th 1147, 53 Cal. Rptr. 2d 99, a firearm is loaded within the relevant meaning, if and only if it has a shell placed in a position ready to be fired. There remains a question whether a firearm with an empty firing chamber, and a detachable magazine that contains rounds inserted into its magazine well, counts as loaded. Thus the California Fish and Game Code § 2006 deems a rifle or shotgun to be loaded “when there is an unexpended cartridge or shell in the firing chamber but not when the only cartridges or shells are in the magazine”. If we can resolve this matter short of litigation, I am willing to compromise by keeping loaded magazines outside of magazine wells. If not, not.

Lastly, to answer your most fanciful concerns, I do not intend to brandish weapons at passing motorists, pedestrians, and cyclists, let alone reenact any of the numerous mass shootings around the country. As we discuss my compliance with the City ordinances, absent any evidence or indications to the contrary, you would do well to assume that I have no intent to commit any felonies or misdemeanors.

Thanks again for your prompt attention to this matter. I look forward to resolving it in time to rid your community of individual and corporate sponsors and enablers of incestuous child rape over the coming holidays.

Michael@massmeans.com | Zeleny@post.harvard.edu | larvatus.livejournal.com | subrah.com
7576 Willow Glen Rd, Los Angeles, CA 90046, U.S.A. | voice:323.363.1860 |
fax:323.410.2373

Wronged by the high and mighty? Cut them down to size with legally safe and ethically sound degradation of unworthy moguls and scrofulous celebrities.

On Wed, Nov 22, 2017 at 4:04 PM, Nicolas A. Flegel <nafi@jsmf.com> wrote:

Dear Mr. Zeleny,

Because you have requested a response to a legal issue, I am responding to your emails of November 9th and November 13th. I am responding to the legal issue you have raised, as well as requesting additional detail from you so we can consider your application. With respect to the legal question, I have analyzed Penal Code Sections 25400, 26350 and 26400, and the corresponding exemptions for filming events found in Sections 25510, 26350, and 26405. It is my opinion that once you obtain a film permit from the City, you will be allowed to possess an unloaded gun(s) to the extent you are using it as part of the film production. The City is willing to work with you in coming to agreeable terms for the filming to take place, so please do not take the approach that a denial of your application is in anyway predetermined. However we need additional information from you so that the City is comfortable in its understanding of what you are proposing and so the City can be satisfied that it will be done in a way that is safe and acceptable.

With respect to specifics, please respond to the below questions as fully as possible to avoid the need for more back and forth. If what is being requested is unclear, please let me know and I can try to clarify or staff can clarify.

- a. Site Set-up: Please confirm where you plan to place the different items (generator, projector, cameras, guns you intend to use as part of your film, and anything else you intend to have on the site); we need to understand exactly where you plan to place the items. A diagram will be very helpful to analyze the site set-up.
- b. Participants: Please provide the names of the participants or crew that will be part of the filming and his or her role (including cameramen).
- c. Cameraman: Please provide detail on where the cameraman or cameramen will be positioned.
- d. Display: Please provide more detail on where you plan to place the video display, which direction the display will face (i.e. towards traffic, towards the businesses on the south side of the road, etc. ?) so staff can analyze for safety/traffic control purposes.
 - i. Please confirm the expected brightness of the display so staff can analyze for safety/traffic control purposes.
 - ii. Please confirm exactly what image or images you intend to show on the display so staff can analyze for safety/traffic control purposes.
- e. Use of Guns in Film: You indicate you intend to use guns as part of the production. Please list the types of guns, serial numbers, who will be supplying them to you, how they will be used as part of the production, etc.
 - i. Please provide more detail on where you plan to

place the weapons and what direction you intend to face them during the production so staff can analyze for safety/traffic control purposes. It is not acceptable (or legal) for you to brandish weapons at passing motorists, pedestrians, and cyclists to film their reactions.

ii. In your email of October 6th, you state that you intend to focus "on public reactions to my display." Please clarify what you mean by this so staff can analyze for safety/traffic control purposes.

f. Staging: Please provide more detail on what areas you plan to use for staging. As set forth above, a diagram will be helpful in this respect for staff's consideration.

g. Loaded Ammunition: You indicate that you intend to have "loaded ammunition feeding devices" with you. Please describe what this means and provide pictures of what props you are proposing to use and confirm you will be using them for film production. For example, are you intending to use props (fakes) or have with you actual magazines with live ammunition?

h. Film Exception for Live Ammunition: If you are proposing to use live ammunition, it is unclear why live ammunition would in any way be necessary for your film production. In light of the numerous mass shootings around the country, I think you can understand the concern regarding this issue. If you believe the film exemptions allow you to carry live ammunition for use in the film production, please provide me the authority so I may review it.

i. Notice: The notice you have drafted to neighboring properties will need to be re-written. Staff can work with you on what would be an appropriate notice.

The City is working with you in good faith so you can put on your film production. However, we need to work together to come to an agreement so filming occurs in a safe and acceptable way. Your application is an unusual one, and implicates numerous public safety considerations due to the props you have indicated you want to use while filming alongside a busy arterial roadway; so your patience is appreciated.

Thank you and hope you have a nice thanksgiving.

Nicolas A. Flegel
Jorgenson, Siegel, McClure & Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
Tel: (650) 324-9300
Fax: (650) 324-0227

Exhibit R

CITY OF MENLO PARK

Special Event Permit Application FAQs

701 Laurel Street, Menlo Park, CA 94025 Ph: 650-330-2223 Fax: 650-330-2242



SPECIAL EVENTS IN MENLO PARK

Thank you for your interest in holding a special event in Menlo Park. Special events play an important role in building community and creating vibrancy within Menlo Park. Our goal is to help event organizers plan a safe and successful event creating minimal impacts to the surrounding neighborhoods. Depending on the nature of your event, additional permits or approvals may be needed so please allow adequate time for processing. Please read all of the materials thoroughly and carefully to ensure the Special Event Permit can be processed in a timely manner.

WHAT QUALIFIES AS A SPECIAL EVENT?

If your event meets one or more of these criteria, you will need to complete a Special Event Application (attached):

- Attendance is expected to exceed 150 people and you will be using outdoor public space
- Use of any City street, sidewalk, or other right-of-way
- Any City street or lane closures
- Any event impacting traffic or intersections
- Any noise exceeding the City's noise ordinance (Municipal Code 8.06.030: Sound measured from subject site to any residential property: 10 p.m. to 7 a.m. - 50 dBA and 7a.m. to 10p.m. - 60 dBA)
- Parking needs that will exceed the capacity of the venue
- Generate a crowd of spectators sufficient in size to obstruct, delay or interfere with the normal flow of pedestrian, vehicular traffic, or city facilities
- Community Events (i.e. Block Parties - not for private or exclusive residential use)
- Events occurring for more than 1 day
- Events needing Police regulation, monitoring or control

WHAT IS A SPECIAL EVENT APPLICATION?

A Special Event Application is a detailed questionnaire to gather all critical information about your event. Instead of completing multiple permit applications, the single application is reviewed internally by each City department to determine which permits or approvals are required. All Special Events Applications are due to the City by the established deadlines (listed below). The acceptance of the application should, in no way, be interpreted as approval of your request. For larger events, we strongly encourage you to submit the application roughly 6-months in advance.

WHAT IS THE PROCESS FOR OBTAINING A SPECIAL EVENT PERMIT?

1. Submit your completed application with a check made payable to City of Menlo Park for \$125 for minor events/\$250 for major events (non-refundable). Applications can be emailed to mlmilde@menlopark.org or delivered to:

Mailed:

City of Menlo Park
ATTN: Special Events – Matt Milde
701 Laurel Street
Menlo Park, CA 94025

Drop Off:

Arrillaga Family Gymnasium
ATTN: Special Events – Matt Milde
600 Alma Street
Menlo Park, CA 94025

For any questions regarding the application, fees, or application process please contact Matt Milde at 650-330-2223. Incomplete applications will not be processed and you will be asked to submit the additional information in order to start the application process.



MP001817

2. You will be sent an email acknowledgement that your application has been received. Your application will then be reviewed by City staff, which may take up to three weeks. During this time, you may be contacted by City staff for clarification of your event details or to schedule a meeting to review the application.
3. After a full review of your application, you will receive either a denial letter or a conditions-of-approval letter. The conditions-of-approval will outline requirements for your event, such as necessary permits, approvals and/or additional application fees. This may include, but not limited to, the following:
 - Certificate of Liability Insurance
 - County of San Mateo Temporary Event Food Permit
 - Facility Reservation Confirmation
 - Fire Department Approval or Permits
 - Proof of Menlo Park Business License
 - Proof of 501c3 Non-profit status
 - Public Notification Requirements
4. Public Notification will be required for some permits based on your application. If, in the Planning Division's opinion, the proposed event could exceed the noise ordinance limits, the Planning Division will prepare a public notice to be mailed to all addresses within 300 feet of the subject property. The notice will state the decision of the City and will serve as the noise permit unless the request is appealed. The Planning Division will mail the notices on the decision date, which starts the 10-day appeal period. If the Planning Division does not receive an appeal in writing, the decision will become effective on the 11th day. If the decision is appealed, the item will be scheduled for the next available Planning Commission meeting. The Planning Commission generally meets on the first and third Mondays of every month. The minimum lead-time between an appeal and a Planning Commission meeting is approximately three weeks. The Planning Commission's decision will also be posted at the Civic Center and on the City's web page: <http://www.menlopark.org/371/Planning-Commission>. The Planning Commission's decision on the noise permit also contains a 15 day appeal period before it becomes active, and the decision can be appealed to the City Council. If the project is appealed to the City Council, the processing time generally would take more than 60 days, due to scheduling and additional public noticing requirements. For projects that require public notification, it is recommended that the application be submitted more than 60 days in advance of the planned event date.
5. Once all of the conditions-of-approval have been met, a Special Event Permit will be issued by the City. You will be required to have this permit in your possession during your event.

WHEN ARE THE APPLICATION DEADLINES?

Please pay close attention to the following application deadlines:

- 30-days for Block Parties not required to have a noise permit
- 60-days for Block Parties required to have a noise permit
- 60-days for all Minor Events that are not considered Block Parties
- 90-days for all Major Events

Applications are accepted up to 12-months in advance of the proposed event date. Applicants are encouraged to apply early to ensure permit is received in a timely fashion. Once an application is submitted you may not receive confirmation that your event has been approved until 30 to 60-days after submission. Please allow yourself ample time for permit processing. Applications that do not meet their required deadline **will not** be processed.

CAN MY EVENT BE A FUNDRAISER?

If the event is a fundraiser, you will be required to fill out the Fundraising Form and provide a copy of the organization 501c3 status. Please inquire about the Fundraising Form with Matt Milde when submitting Special Event application.

WHAT ARE THE SPECIAL EVENT PERMIT FEES?

Special Event Application Fee: \$125 (minor); \$250 (major)

Noise Permit Fee: \$135

Police Services Fees: Fee based on staff hourly billing rate. 50% of the estimated Police services must be paid prior to a permit being issued.

Barricade Rental Fees: 3' barricade - \$3/day & 12' barricade - \$8/day (Permit required for pick-up)

Park Rental Fees: Varies (see below) – Park fees are also listed in the City of Menlo Park's Master Fee Schedule.

WHAT IS THE DIFFERENCE BETWEEN A "MINOR" AND "MAJOR" EVENT?

The difference between a minor and major event depends on the nature of the event and its impact on city services. For example, most block parties closing a single road would fall under a "minor" event, while most fun runs requiring the closure of many roads would be considered a "major" event. Please contact the permit coordinator, Matt Milde, at (650) 330-2223 if you have questions on how your event would be categorized.

CAN I POST SIGNAGE?

All signs posted before and during the event shall be approved by staff prior to issuance of the permit. If the event requires, "No Parking" signage, 72-hour notification is required. Road signage can be rented from the Menlo Park Corporation Yard with an approved permit.

WHO CAN I CONTACT REGARDING WASTE REMOVAL?

For larger events where additional garbage removal will be needed, please contact Recology at www.recologysanmateocounty.com or call (650) 595-3900. Failure to remove trash from event will result in a \$250 fine and may result in the inability to obtain a Special Event Permit in the future.

HOW DO I GET A FOOD PERMIT?

If serving food outside, San Mateo County Temporary Event Food permits are issued by County of San Mateo Environmental Health Services (2000 Alameda de las Pulgas #100, San Mateo, CA 94403 or (650) 372-6200). Documents are available online - smchealth.org. Costs vary depending on the nature of the event, but applications need to be submitting within 2-3 weeks prior to the event. A food permit is not required to receive your approved permit from the City of Menlo Park, but you are responsible for obtaining the necessary San Mateo County permits when serving food publically.

WHAT IS THE BELLE HAVEN MINI-GRANTS PROGRAM?

The City of Menlo Park Community Services Department has partnered with the Silicon Valley Community Foundation and the Belle Haven Community Development Fund to initiate the Belle Haven Mini-Grants Program. If you live in the Belle Haven neighborhood and are planning a community event, you might be eligible for a grant to help subsidize your special event application fees. For more details, contact Juanita Croft at (650) 450-5484 or BHaven@siliconvalleycf.org.

HOW CAN I GET A BUSINESS LICENSE?

Business License shall be obtained for all outdoor sales. Business License applications can be found online at www.menlopark.org under the Finance Department. Completed forms can be dropped off at the front desk in City Hall (701 Laurel Street).

CAN I SERVE ALCOHOL?

If serving or selling alcohol, ABC licenses can be obtained by California Department of Alcohol Beverage Control. More information can be found at www.abc.ca.gov or by calling (415) 356-6500.

CAN I OBTAIN A PERMIT FOR PRIVATE USE?

Yes, a permit may be issued for private events on City facilities where a rental reservation can be issued (ie. Burgess Park, Nealon Park, Bedwell-Bayfront Park, etc.) provided the event is aligned with the current use policies of that park/facility. Permits requiring road closures will **NOT** be approved for private functions / reserved use (ie. Birthday Parties, Weddings, Reunions, etc.). Any applicant who wants to close off a public right-of-way for private use will be directed to other City facilities (ie. Arrillaga Family Recreation Center, Onetta Harris Community Center, picnic/park facilities, etc).

DO I NEED TO MAKE A RESERVATION FOR PARK SPACE BEFORE I APPLY?

For renting sports fields, picnic areas, or park space, you are welcome to contact the Community Services Department at 650-330-2223 for rates and availability or inquire within at the Front Desk of the Arrillaga Family Gymnasium (600 Alma Street). Facility availability can also be viewed at www.menlopark.org. However, you are not required to make a reservation prior to the submission of your permit application. Please review the additional rental and use policies of the facilities you intend to utilize for your event.

IS INSURANCE REQUIRED FOR MY EVENT?

Yes. To apply for City of Menlo Park special event permit, one must provide a *Certificate of Liability Insurance* along with their Special Event Application and payment. A Certificate of Liability Insurance can be issued by the renter's homeowner's insurance or other insurance carrier. In order for the certificate to be valid, it must contain the following:

- The renter's name must be listed as the one "insured."
- The policy must not expire before the planned event date.
- The policy must be for \$1,000,000.
- The "description" should list the rental location, day, and event planned.
- The City of Menlo Park at 701 Laurel Street, Menlo Park, CA 94025 must be noted as "additional insured."

A special event permit **will not** be issued until the required application fees, insurance, and other supplementary materials, as indicated in the Special Event Application, have been received. A special event permit issued for a private function on private property is not required to submit proof of liability insurance to the City.

WHAT WOULD CAUSE A PERMIT TO GET DENIED?

Approval or denial of applications are based upon several factors including: size (number of people), scale, location, route to be closed, community impact, impact on City services, past practices/experiences with issued permits, intended use, non-payment of fees, poor articulation of event as reflected in the application and site map, etc.

WHAT IF MY PERMIT IS DENIED?

Any applicant is welcome to re-apply provided they meet the 60-day deadline and pay appropriate fees; however, depending on the application details we cannot always issue a permit.

Determination of the approval or denial of any application is at the discretion of the Special Event Permit Committee. Final decisions are appealable to the Community Services Director, please contact Matt Milde at mlmilde@menlopark.org to seek an appeal for a denied permit.

WHERE CAN I FIND INFORMATION ON INSURANCE CARRIERS?

Below you will find a number of resources if you need to purchase special event insurance for your event. Please note: These resources are not provided as a recommendation or sole insurers for special events, but is provided here as a tool to aid you in your research in obtaining a Certificate of Liability for your event.

Company Name	Website	Phone
AAA Homeowners	www.aaa.com	800-922-8228
Allied Brokers	www.alliedbrokers.com	650-328-1000
Event Helper	www.eventhelper.com	n/a
Hub International	www.eventinsure.hubinternational.com	650-964-8000
K&K Insurance	www.kandkinsurance.com	877-648-6404
Markel American Insurance Co.	www.markeleventinsurance.com	800-236-4252
Private Event Insurance	www.privateeventinsurance.com	877-723-3933
RVNA Event Insurance	www.specialeventinsurance.com	800-364-2433
Specialty Risk Insurance LLC	http://www.specialtyriskinc.com	928-772-0844

WHERE DO I PICK-UP BARRICADES?

You may pick-up barricades/street signage by going to the **City of Menlo Park Corp Yard** at 333 Burgess Drive on Mon-Fri 8am-4pm; please ask for Irv Meachum. The Menlo Park Corp Yard is closed every other Friday, please contact the number above if you wish to pick-up barricades on a Friday to verify if the Corp Yard will be open. Rental fees apply as articulated in the Special Event Permit Information packet. Please contact (650) 330-6780 with any questions regarding the pick-up/drop-off of your rented barricades and/or street signage. Your approved Special Event Permit and payment is required for pick-up of any barricade/street sign. Depending on events/projects throughout the year we may not be able to accommodate the precise signage you've requested on your Special Event Permit. Every attempt will be made to provide you adequate signage for your event purposes. Please note: Only approved barricades can be used to block city streets; hay bales, sawhorses, jump houses, motor vehicles, etc. are not permitted. If the event requires, "No Parking" notification, 72-hour notification is required. Below are additional resources for renting traffic signage:

D&M Traffic Services Inc.
408-436-1127

Interstate Traffic Control
408-279-1588

WHAT IF I STILL HAVE QUESTIONS?

Please contact the permit coordinator, Matt Milde, at (650) 330-2223 or mmilde@menlopark.org with any questions. If requested, appointments to discuss your application in-person may be made in advance. Please note that we may not be able to discuss your permit if you walk-in without an appointment; scheduling an appointment in advance is strongly advised.

Exhibit S

Special Event Permit Flowchart



STEP A: Initial Contact

Special Event Applicant

Matt Milde
Community Services
(650) 330-2223

- Sends Application
- Answers Questions
- Provides Process Overview

Incomplete Application

Not Approved:

Return Routing Form to Matt

Not Approved:

STEP B: Application Received (3 days)

Initial Screening Process— Matt Milde (CSD)

- Reviews Application
- Sends email confirmation (48 hours)
- Make and send copies to Internal Staff

STEP C: Staff Internal Review (10 Days)

Completion of Special Event Application Routing Review Form

Sgt. Matt
Ortega
(Police)

Dave
Mooney
(PW - Maint)

Whitney
Loy
(PW-Eng.)

Kyle
Perata
(Planning)

Matt
Milde
(CSD)

Bob
Blach
(Fire)

STEP D: Meeting with Applicant (10 days)

More Information Needed

Detailed Review of Application

- Matt Milde confirms meeting time with applicant
- Team meets with applicant to review details
- Conditions of Approval or Denial is determined by team
- Matt Milde sends Letter of Denial or Conditional Approval (within 4 weeks of receiving application)

Not Approved

Conditionally Approved

EXHIBIT 30
Chief Dave Bertini
3/19/2019
Heather J. Bautista
CSR 11600, RPR, CRR

MP001822

STEP E: Conditional Approval Items (2-3 weeks)

Pending Items Needed for Final Approval

- Applicant needs to submit all pending items within 2-3 weeks of the Letter of Condition Approval to Matt Milde
- Any items required by specific department will be routing to the respective department upon receipt
- If items are not received, the permit is not approved.

STEP F: Public Notification Process (Up to 60 days)

(Noise Permits Only)

Public Notification

- Planning Department sends out Public Notification
- Any appeals will go to the upcoming Planning Commission Meeting for review
- No appeals will result in approval of the noise permit
- Appeals approved by Planning Commission results in no noise permit.

STEP G: Final Approval (Up to 60 days)

Special Event Permit Issued

Matt Milde sends final special event permit and receipt to applicant

STEP A

Not Approved

Exhibit T

Special event permits

2016 special event permit updates

- [2016 - Notice to Block Party Organizers](#)
- [2016 - Notice to Special Event Permit Applicants](#)

Thank you for your interest in holding a special event in Menlo Park. Special events play an important role in building community and creating vibrancy within Menlo Park. Our goal is to help event organizers plan a safe and successful event creating minimal impacts to the surrounding neighborhoods. Depending on the nature of your event, additional permits or approvals may be needed so please allow adequate time for processing. Please pay close attention to the following application deadlines:

- 30-days for Block Parties not required to have a noise permit
- 60-days for Block Parties required to have a noise permit
- 60-days for all Minor Events that are not considered Block Parties
- 90-days for all Major Events

Special event qualifications

If your event meets one or more of these criteria, you will need to complete a Special Event Application:

- Any city street or lane closures
- Any event impacting traffic or intersections
- Any noise exceeding Municipal Code 8.06.030 (noise ordinance): Sound measured from subject site to any residential property:
 - 10:00 pm - 7:00 am - 50 dBA
 - 7:00 am - 10:00 pm - 60 dBA
- Attendance is expected to exceed 150 people and you will be using outdoor public space
- Community Events (i.e. Block Parties - not for private or exclusive residential use)
- Events needing Police regulation, monitoring or control
- Events occurring for more than 1 day
- Generate a crowd of spectators sufficient in size to obstruct, delay or interfere with the normal flow of pedestrian, vehicular traffic, or city facilities
- Parking needs that will exceed the capacity of the venue
- Use of any city street, sidewalk, or other right-of-way

Permit application submittal

Submit your completed application before your established deadline (indicated above) with your application fee. Check should be made payable to City of Menlo Park for \$125 for minor events and \$250 for major events (non-refundable). Application can be delivered or mailed to:

Mailed
City of Menlo Park
ATTN: Special Events - Matt Milde
701 Laurel St.



MP001830

Menlo Park, CA 94025

Drop Off

Arrillaga Family Gymnasium

ATTN: Special Events - Matt Milde

600 Alma St.

Menlo Park, CA 94025

Select Language | ▼

Incomplete applications will not be processed and you will be asked to submit the additional information in order to start the application process.

Film permits

Please contact Development Services Technician, Janice Dong Sample, in the Community Development Department to obtain a film permit. She can be reach via [e-mail](#) or by calling 650-330-6716.

Contact Us

Matt Milde

Recreation Coordinator

[Email](#)

650-330-2223

Related documents

- [Application](#)
- [Flowchart](#)
- [Insurance Requirements](#)
- [Permit FAQs](#)
- [Primary Response Routes](#)

[Government Websites by CivicPlus®](#)

Exhibit U

Film Production in Menlo Park

Film production in the City of Menlo Park must comply with following conditions:

1. Permittee shall submit in writing all pertinent details regarding the filming including the date(s) and times of the filming including time needed for set-up and take down; a description of the nature of the filming; the location of the filming; a list of all equipment involved in the filming, including cars and other vehicles; the proposed location for the parking and storage of all such vehicles and equipment; the number of cast and crew members involved in the filming; and an indication of any special needs, such as amplified noise, etc. If granted, the permit's approval will be confined to such activities, locations and time schedules as submitted and approved.
2. Three days prior to the beginning of filming, permittee shall provide written notice to residents and businesses within 200 feet of the proposed filming.
3. Permittee shall obey all City Ordinances, rules and the guidance of City supervisory employees pertaining to the use of City property, including the location, parking and storage of vehicles and equipment, crowd and traffic control, and the restoration of premises to their original condition after use for filming purposes.
4. Permittee will comply with the City of Menlo Park noise ordinance. Filming will be limited to the hours between 8:00 a.m. and 6:00 p.m. and will result in low to no noise levels. The use of any explosive, fireworks, or pyrotechnic devices is strictly prohibited.
5. Permittee shall make arrangements for traffic control satisfactory to the Menlo Park Police Department prior to filming on City streets and in other public areas. Permittee will be charged to recover the cost of traffic control provided by the City. Permittee will legally park vehicles and will not require street closure or traffic control other than what is approved.
6. Permittee shall covenant and agree to indemnify and hold harmless the City from any and all loss, cost, damages and expenses of any kind, including attorney fees, on account of personal injury or property damage resulting from any activity of Permittee on municipal property or in connection with its use of municipal property.
7. Liability insurance in no way limits the indemnity agreement above, Permittee will furnish the City a Certificate of Liability Insurance acceptable to its Risk Management office showing combined single limit coverage for bodily injury and property damage, or the equivalent of such coverage, not less than \$1 million. The City, including its officials, employees and agents, shall be named as additional insured in the Liability Policy. Contractual liability coverage insuring the obligations of this Agreement is also required. The insurance may not be canceled or substantially modified without ten (10) days written notice to the City Manager's Office.



MP005241

8. Permittee shall pay, with a valid check, money order, credit card or cashier's check, a **filming permit application fee of \$150.00 in addition to the daily permit fees of \$50 per day for still photography and short subject, \$100 per day for industrials, and \$150 per day for features, TV, music videos and commercials.**
9. Permittee shall apply for a one-time Business License and pay, with a valid check, money order, credit card or cashiers check. See **Guide to Annual Business Licensee Fee Calculation** for the fee schedule.
10. Permittee will adhere to the provisions and conditions set forth in the permit. If Menlo Park Police Department or other City personnel are required to correct, mitigate, or provide any service not consented to under this permit, permittee will be required to pay for all services rendered. Payment shall be made in the form of *a valid check, money order, credit card or cashiers check* immediately upon demand made by the City.

PROJECT ADDRESS: _____

Read and agreed on:

Date: _____

Signature

Print name

Exhibit V

From: Bertini, David C
To: Milde, Matt L; Brandell, Cherise E; Jonsen, Robert
Cc: Zeo, Todd A
Subject: RE: Menlo Park Special Event Permit
Date: Friday, April 15, 2016 1:40:00 PM

Matt, we all received the email.

Do not reply and stand by for our response....

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

From: Milde, Matt L
Sent: Friday, April 15, 2016 1:40 PM
To: Brandell, Cherise E; Jonsen, Robert
Cc: Zeo, Todd A; Bertini, David C
Subject: FW: Menlo Park Special Event Permit

FYI

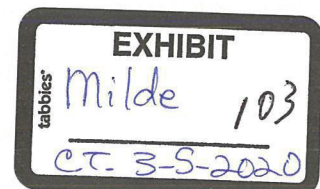
Matt Milde
Recreation Coordinator
City of Menlo Park
(650) 330-2223
mlmilde@menlopark.org

[Special Events](#) | [PAC Events](#) | [Aquatics](#) | [Event Permits](#) | [Parks](#) | [Tennis Courts](#)

From: Michael Zeleny [<mailto:michael@massmeans.com>]
Sent: Friday, April 15, 2016 1:35 PM
To: McClure, William; Cindy S. Elmquist; Bertini, David C; Milde, Matt L
Cc: Scott Sandell; Subrah Iyar; Dick Kramlich; David W. Affeld; Dan Primack; Louis Citron; Forest Baskett; Brooke Seawell; Peter Sonsini; Robert Garland; Jake Nunn; Sigrid Van Bladel; Hawk, Robert B.; Arno Penzias
Subject: Re: Menlo Park Special Event Permit

"William L. McClure" <wlm@jsmf.com>,
"Cindy S. Elmquist" <cse@jsmf.com>
Jorgenson, Siegel, McClure & Flegel, LLP
1100 Alma Street, Suite 210
Menlo Park, CA 94025
[650-324-9300](tel:650-324-9300) Phone
[650-324-0227](tel:650-324-0227) Fax

"David C. Bertini" <dcbertini@menlopark.org>,
"Matt L. Milde" <mlmilde@menlopark.org>,
The City of Menlo Park
701 Laurel St.



Menlo Park, CA 94025
650-330-6600

Dear Mr McClure,

I am lodging herewith an appeal of your denial of my application for a special event permit, by outlining its purpose and scope and responding to all of your objections in order.

I have been protesting NEA's ongoing support of its venture partner Min Zhu and its coverup of his incestuous child rape since 2004. In the course of the ensuing litigation and subject to demands by Menlo Park city authorities, I have been forced to relocate my protests from the immediate vicinity of NEA's headquarters, to the narrow strip of public grounds surrounding the 16 private acres of the Rosewood Sand Hill compound located at 2825 Sand Hill Rd, Menlo Park, CA 94025. The median strip identified in his current application affords the only possible location for staging my protest in clear view of the NEA headquarters. My open display of firearms is germane to the message that responds to the death threats made against me and my family in the names and on the behalves of individuals and business entities sponsored and supported by NEA. The continual and open-ended nature of my protest responds to NEA's long-standing refusal to account for its responsibility in supporting and covering up the lawless conduct of its associates.

As to your claim that my application is incomplete, attached please find a map of the area in question, which clearly designates the specific and modest boundaries of my special event. That is all that the City of Menlo Park ("the City") can reasonably expect and require to analyze whether traffic control will be necessary or what other conditions might be necessary as part of its approval of my application. As suggested before, and witnessed by my past appearances in your jurisdiction, my use of sound and lighting equipment is subject to our ongoing mutual agreement on their time, place, and manner parameters. If you have any specific requests in this regard, please make them with no further ado, bearing in mind that all restrictions on my expressive conduct must be (1) content-neutral, (2) narrowly tailored to serve a significant government interest, and (3) leave open ample alternative channels for communication. (See *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983).) As resolved as I am to see my task through, I remain open to all reasonable accommodations.

While the First Amendment "does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired" (*Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981)), it protects the right of every citizen to "reach the minds of willing listeners [and] to do so, there must be opportunity to win their attention." (*Hill v. Colorado*, 530 U.S. 703 (2000).) My presence on NEA's grounds has been ruled out as a part of settling its trespass claims against me five years ago. The currently proposed location of my performance therefore represents my only remaining opportunity to address directly the public associated or connected with it. Please bear in mind the foregoing authorities in your attempts to deny me my right to speak in this way and venue.

With respect to the application not meeting the criteria for a special event, the City lacks the authority to define a special event subject to its permitting requirements, beyond ensuring that it does not disrupt the ordinary use of its public spaces. It is true that I am proposing a media production of a one-man protest. My primary aim, however, is to exhibit my media to the thousands of daily passerby on Sand Hill Road, even as I stream their reactions online. My communication needs to be both physically proximate for them, and available over the Internet for more distant audiences. This project falls squarely within the ambit of Constitutional protection of political speech. My production is no less deserving of such protection for being modestly scaled. Thus *Branzburg v. Hayes*, 408 U.S. 665, 704 (1972): "Liberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as of the large metropolitan publisher who utilizes the latest photocomposition methods."

While the First Amendment literally forbids the abridgment only of "speech", the Supreme Court has long recognized that its protection does not end at the spoken or written word, even as it acknowledged that not all conduct intended by the person engaging therein to express an idea is so protected. (See *United States v. O'Brien*, 391 U.S. 367 (1968).) For such conduct may be "sufficiently imbued with elements of

communication to fall within the scope of the First and Fourteenth Amendments". (See *Spence v. Washington*, 418 U.S. 405 (1974).) "In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether [a]n intent to convey a particularized message was present, and [whether] the likelihood was great that the message would be understood by those who viewed it." (See *Texas v. Johnson*, 491 U.S. 397 (1989).) In sum, according to the Supreme Court's test for expressive conduct, known as the Spence-Johnson test, an action is protected by the First Amendment if: (1) the speaker-actor intends for the conduct to express a particularized message; and (2) that message would be understood by others. In the course of reaffirming the Spence-Johnson test in *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995), the Supreme Court ruled that "a narrow, succinctly articulable message is not a condition of constitutional protection, which if confined to expressions conveying a 'particularized message,' [...] would never reach the unquestionably shielded painting of Jackson Pollock, music of Arnold Schönberg, or Jabberwocky verse of Lewis Carroll." In the course of my protest, the expressive content of openly carried firearms presented as a means of defense both warranted and necessitated by my circumstances, will be bolstered by the concurrent multimedia presentation of the evidence of threats I received in the names and on the behalves of NEA's associates, the damage that they claim to have inflicted on my family, and their history of unlawful violence. Your study of my past displays should suffice to reassure you that my painstakingly particularized message will be infinitely easier to parse than The She-Wolf, Pierrot Lunaire, or Jabberwocky.

This brings me to the matter of my venue. Streets and sidewalks are "prototypal" examples of public fora, and have immemorially been considered a rightful place for public discourse. (See *Hague v. C.I.O.*, 307 U.S. 496 (1939).) Public fora "have achieved a special status in our law", for they "represent areas within which tolerance for inhibitions on speech, petition, and assembly is at a minimum." The government therefore "bear[s] an extraordinarily heavy burden to regulate speech in such locales." (See *N.A.A.C.P. v. City of Richmond*, 743 F.2d 1346 (9th Cir. 1984).) "And just as streets and sidewalks are prototypical examples of public fora, political speech related to current events is the prototypical example of protected speech." (See *American-Arab Anti-Discrimination Committee v. City of Dearborn* ("AAADC"), 418 F.3d 600 (6th Cir. 2005).) In the matter at hand, the current event at issue is NEA's ongoing financial support of its child-raping protégé Min Zhu. As long as I do not "realistically present serious traffic, safety, and competing-use concerns beyond those presented on a daily basis by ordinary use of the streets and sidewalks," you cannot require me to obtain a permit for exercising my Constitutional rights, let alone deny its issuance. (See *Santa Monica Food Not Bombs v. City of Santa Monica* ("SMFNB"), 450 F.3d 1022 (9th Cir. 2006).) Moreover, I generally do not need a permit to hold a rally or a march on public grounds while obeying traffic laws. (See SMFNB, 450 F.3d at 1039, 1040-43; AAADC, 418 F.3d at 608.) Thus I am asking for nothing more nor less than your approval of my rightful, conspicuous presence on public grounds in full compliance with all applicable laws.

As to my compliance with traffic laws, to repeat myself, I do not intend use any City street or right of way. The California Vehicle Code Section 525 defines the right of way as "the privilege of the immediate use of the highway". In this regard, the right of way in the median island, where I intend to conduct my performance, is ordinarily reserved for pedestrians alone. The small part of the median island that I intend to occupy will leave plenty of room for the passage of vehicles in any emergency, e.g. as regards tow trucks allowed to do so pursuant to CVC Section 21719. I do not intend to present any visual impairment to oncoming traffic and vehicles traveling on Sand Hill Road. As to presenting a visual distraction, I am well within my First Amendment rights to do so in a rightful place for public discourse, within which tolerance for your inhibitions on speech, petition, and assembly is at a minimum.

To clarify the nature of the proposed multimedia production in the context of my one-man protest, I am not intending it for the filming of a movie, and therefore you may not require me to obtain a film production permit. Kindly recall that I have borne the brunt of abusive and oppressive conduct by the City of Menlo Park Police Department ("the police") since the inception of my protests a decade ago. This abuse and oppression included, without limitation, illegal surveillance and harassment of myself and my associates, arbitrary imposition of constraints on our performance, and participation in my malicious prosecution in San Mateo Superior Court, wherein the prosecutor expressly and unequivocally acknowledged on court record that she was seeking my criminal conviction on behalf of NEA. Accordingly, I would not dare to appear in your jurisdiction without recording each of my interactions with your minions, for my security

and theirs alike. And I have every right to make this recording without asking or paying for your permission.

As explained by Evan Bernick and Paul Larkin in "Filming the Watchmen: Why the First Amendment Protects Your Right to Film the Police in Public Places", lower federal courts have generally said that the First Amendment protects a right to record and photograph law enforcement in public view. Some restrictions may be constitutional, but simply prohibiting the recording because the person is recording the police cannot be constitutional. While the Supreme Court is yet to consider this question, such is the general view in the federal appellate decisions that have done so. An apparent exception is a recent federal trial court decision in *Fields v. City of Philadelphia* and *Geraci v. City of Philadelphia*, which takes a different, narrower approach: There is no constitutional right to videorecord police, the court says, when the act of recording is unaccompanied by "challenge or criticism" of the police conduct. But even under this restrictive standard, I remain well within my rights to videorecord at will, without warning, and regardless of permission, all my public performances in your jurisdiction, for the sake of safety and transparency. In light of the history of my peaceful protests being subjected to oppressive scrutiny and censure by the City authorities, I am planning to exercise my rights under the First Amendment to film my appearances there, for the express purpose of mounting a potential challenge and criticism of the police conduct in the event of further obstructions mounted by Menlo Park. According to *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969) the discretion of public officials charged with permitting First Amendment activity must be limited by "narrow, objective, and definite standards." It therefore falls upon the City to identify such standards that deny my rights or subject them to permitting requirements.

Lastly, your concern is that it is illegal to open carry a firearm in the State of California is likewise misdirected. It is none of your business to seek or scrutinize any logical nexus or legitimate purpose of carrying a firearm the proposed event. I am well within my rights in carrying a firearm, either openly or concealed, in the course of an entertainment event, as its authorized participant, as protected by the Constitution of the United States, and clearly warranted by law in the state of California.

Thus California Penal Code Section 25400 (a) (2): "A person is guilty of carrying a concealed firearm when the person does any of the following: [...] Carries concealed upon the person any pistol, revolver, or other firearm capable of being concealed upon the person." Whereas P.C. Section 25510 qualifies this ban: "Section 25400 does not apply to, or affect, any of the following: (a) The possession of a firearm by an authorized participant in a motion picture, television, or video production, or an entertainment event, when the participant lawfully uses the firearm as part of that production or event, or while going directly to, or coming directly from, that production or event. (b) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production, or an entertainment event, for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event." Please be assured that I intend to authorize myself as a participant in my own entertainment event.

A similar exemption applies to the ban on the open carrying of an unloaded handgun. Thus P.C. Section 26350 (a) (1): "A person is guilty of openly carrying an unloaded handgun when that person carries upon his or her person an exposed and unloaded handgun outside a vehicle while in or on any of the following: (A) A public place or public street in an incorporated city or city and county." Whereas P.C. Section 26375 qualifies this ban: "Section 26350 does not apply to, or affect, the open carrying of an unloaded handgun by an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses the handgun as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event."

Similar exemptions apply to long guns. Thus P.C. Section 26400 (a): "A person is guilty of carrying an unloaded firearm that is not a handgun in an incorporated city or city and county when that person carries upon his or her person an unloaded firearm that is not a handgun outside a vehicle while in the incorporated city or city and county." Whereas P.C. Section 26405 qualifies this ban: "Section 26400 does not apply to, or affect, the carrying of an unloaded firearm that is not a handgun in any of the following circumstances: [...] (r) By an authorized participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture, television or video production, or entertainment event, when the participant lawfully uses that firearm as part of that production or event, as part of rehearsing or practicing for participation in that production or event, or while the participant or authorized employee or agent is at that production or event, or rehearsal or practice for that production or event." In short, conspicuous display of otherwise legally possessed unloaded firearms in the course of my entertainment event is my Constitutional right under the First Amendment, expressly protected by California statutes. In the event, these firearms will include, without limitation, a pair of H&K P7M13 handguns, an LRB M25 designated marksman rifle, a Winchester M97 trench shotgun with an M1917 Remington bayonet, and a semiautomatic, belt-fed, tripod mounted Browning M1919a4, all conspicuously adjoined by ample supplies of ammunition.

I trust that I have met your concerns over the completeness of my application. Please acknowledge the receipt of this email and approve my application at your earliest convenience. To repeat myself, we are equally willing to negotiate or litigate. Please refer to *Lefemine v. Wideman*, 568 U.S. ____ (2012), which held that a plaintiff who secured a permanent injunction but no monetary damages was a "prevailing party" under 42 U.S.C. § 1988 and could receive attorney fees, where the injunction ordered the defendant officials to change their behavior in a way that directly benefited the plaintiff, who could thereafter engage in demonstrations without fear of sanctions with which police had previously threatened him. As public officials, NEA's minions among your City colleagues enjoy qualified immunity from damages suits if they violate my rights, but only as long as they do not violate "clearly established" law. "If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct." (See *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).) In short, your personal liability will be richly borne out by the foregoing statutes and case law. The last issue that remains to be litigated conclusively is the expressive content of openly carried firearms. In this connection, please refer to *Nordyke v. King*, 563 F. 3d 439 (9th Cir. 2009), wherein the state of California tacitly conceded the issue even before the Supreme Court incorporated the Second Amendment in *McDonald v. Chicago*, 561 U.S. 742 (2010). Long story short, if you continue siding with NEA's minions, I will win at the City's certain and considerable expense.

Michael@massmeans.com Zeleny@post.harvard.edu | larvatus.livejournal.com | subrah.com
7576 Willow Glen Rd, Los Angeles, CA 90046, U.S.A. | voice:323.363.1860 |
fax:323.410.2373

Wronged by the high and mighty? Cut them down to size with legally safe and ethically sound degradation of unworthy moguls and scrofulous celebrities.

On Mon, Sep 21, 2015 at 2:12 PM, Cindy S. Elmquist <cse@jsmf.com> wrote:

>
> Bill McClure requested I forward to you the attached letter with enclosure thereto.
>
>
>
> Cindy S. Elmquist, Assistant to William L. McClure
>
> Jorgenson, Siegel, McClure & Flegel, LLP
>
> 1100 Alma Street, Suite 210

>
> Menlo Park, CA 94025
>
> (650) 324-9300 Phone
>
> (650) 324-0227 Fax
>
>
>
>
>

Exhibit W

From: Bertini, David C
To: David Tresmontan; jimmy.mazon@rosewoodhotels.com; tsanchez@smcgov.org; Steve Wagstaffe; McClure, William (wlm@ismf.com)
Cc: Dixon, William A; Jonsen, Robert (RJonsen@menlopark.org); Greg Munks (gmunks@co.sanmateo.ca.us)
Subject: RE: Special Event Permit Application
Date: Tuesday, July 21, 2015 6:13:00 PM

Good afternoon all.

As you are aware Michael Zeleny has submitted an application for a "special event" to be held somewhere in front of the Rosewood Hotel / NEA Property located at 2825 Sand Hill Road in Menlo Park. This "special event" would consist of a very similar protest he has conducted in the past, including carrying several unloaded military type firearms, along with a 55" display with sexually explicit caricatures, portable lighting and a generator. The application indicates a set up date of 9-30-15, with the event to be "ongoing" and "indefinite".

Although we intend to deny this application on several grounds (predominately that this is not a "special event" as defined by the City), we are in the process of requesting more information from him on the exact location he was intending as it was not clear on his application. Once we have gone through the formal information gathering process, we will notify him of our decision on his application.

In the meantime, I will be clearing up several legal issues with the District Attorney's Office and then scheduling a meeting with the entities involved (NEA, Rosewood Hotel, Menlo Park Police and City Attorney's Office, SMC Sheriff's Office and the District Attorney's Office). At this meeting we can discuss our combined response in case Zeleny decides to proceed without a permit.

If those interested in attending can please check their availability the week of August 17th or the week of August 24th, I will set up a meeting to discuss our response to any possible action by Zeleny.

Feel free to contact me if you have any questions.

Thanks.

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

From: larvatus@gmail.com [mailto:larvatus@gmail.com] **On Behalf Of** Michael Zeleny
Sent: Friday, July 10, 2015 11:05 AM
To: McClure, William; Scott Sandell; Milde, Matt L; Police Chief
Cc: David W. Affeld; Peter Shimamoto

EXHIBIT

0262

MP00

Subject: Special Event Permit Application

Michael Zeleny
michael@massmeans.com
zeleny@post.harvard.edu
7576 Willow Glen Road, Los Angeles, CA 90046
voice:323.363.1860
fax:323.410.2373

City of Menlo Park
Matt Milde
Recreation Program Coordinator
mlmilde@menlopark.org
701 Laurel Street
Menlo Park, CA 94025
voice:650.330.2223
fax:650.330.2242

By email, fax, and postal mail.

Starting in October 2015, we shall maintain a portable multimedia presentation illustrating ongoing corporate support of New Enterprise Associates (NEA) for incestuous child rapist Min Zhu, and continuing until NEA publicly acknowledges its wrongdoing and severs its relationship with Min Zhu, Scott Sandell, and Dick Kramlich. I shall be present on site around the clock, served by support staff and equipped with fully operational, exposed and unloaded military grade firearms and loaded ammunition feeding devices therefor, including without limitation, a 9mm Para semiautomatic SIG P210 pistol, and a 7.65x51mm NATO semiautomatic LRB M25 rifle and tripod-mounted belt-fed Browning M1919a4, in full compliance with all applicable laws. A 55" portable media display powered by a portable gas generator will display videos featuring explicit representations of sexual violence committed by NEA's publicly disgraced protégé. A sample image can be found at <http://larvatus.livejournal.com/371973.html>. All media aspects of this event will be subject to content-neutral regulation negotiated with Menlo Park authorities. My fundamental rights under the First and Second Amendments of the Constitution of the United States are reserved and non-negotiable.

A site map can be found at <https://www.google.com/maps/@37.4197308,-122.2137188,17z/>. My display will be confined to the median strip on Sand Hill Road directly across the NEA headquarters. No obstruction of automotive or foot traffic will take place. Please contact me to arrange for the payment of the special event fee and discuss any organizational matters. Please address all legal inquiries and requests to David W. Affeld, Affeld Grivakes Zucker LLP, 2049 Century Park East, Suite 2460, Los Angeles, CA 90067, voice:310.979.8700, fax:310.979.8701.

cc:

Bill McClure
Menlo Park City Attorney
wlm@jsmf.com voice:650-330-6610
Jorgenson, Siegel, McClure & Flegel, LLP

1100 Alma Street, Suite 210
Menlo Park, CA 94025
voice:650.324.9300
fax:650.324.0227

Robert Jonsen
Menlo Park Police Chief
policechief@menlopark.org
701 Laurel St.
Menlo Park, CA 94025
voice:650.330.6600

Scott Sandell
New Enterprise Associates
ssandell@nea.com
2855 Sand Hill Road
Menlo Park, CA 94025
United States
voice:650.854.9499
fax:650.854.9397

Michael@massmeans.com | Zeleny@post.harvard.edu | 7576 Willow Glen Road, Los Angeles, CA 90046 | voice:323.363.1860 | fax:323.410.2373
http://larvatus.livejournal.com | "All of old. Nothing else ever. Ever tried. Ever failed. No matter. Try again. Fail again. Fail better." — Samuel Beckett

Exhibit X

From: O'Connor, Dani
To: Jensen, Robert
Subject: Minutes
Date: Monday, August 10, 2015 10:11:20 AM
Attachments: August Minutes.docx

Please look these over...

**Management Staff Meeting
Tuesday, August 4, 2015**

Presentation given regarding GPS cash pack devices deployed in Menlo Park

3SI is the producer only dye-pack manufacturer in the United States and they also manufacture cash pack tracking devices used primarily in banks. Locations in Menlo park include both locations of Bank of America on El Camino and Sand Hill. The signal will refresh every 6 seconds once the device is deployed within 35-65 feet in accuracy however, after 7 hours, the device goes dead and can no longer be tracked. The device has helped to develop apprehend 70-85% of suspects.

The devices are used in banks, big box stores and pharmacies. The devices trigger an alert at the 3SI call center as well as our dispatch center. Dispatch can log into the 3SI website directly or 3SI will call and provide third party information over the phone. The department will be provided a radio beacon which will be kept in the sergeant's office. The service is provided at no charge to law enforcement and supported by financial institutions nationwide.

Staffing Changes

Beginning August 7th, Sergeant Romero will be back on A side mids. and Sergeant Mackdanz will be making the transition to Administrative Sergeant.

Officer Vasquez will also be back to full duty and for the first time in two years, patrol will be fully staffed.

Sergeant Paugh will take over the FTO program.

Corporal Expectations

Chief Jonsen pays attention to what is happening on patrol. He expects professionalism from everyone in the department and believes in each of you and your ability to do your job. You are the first contact to the community and it is expected that each of you treat others with respect including each other, peers, trainees, those on your team and those within the community.

You will need a great deal of patience with developing others who are coming in with little to no experience. You are all expected to provide trainees with an opportunity to succeed. The chief is holding each corporal accountable for the end training product from productivity to report writing. Current reports are missing basic key elements which should not be missing from a report. Corporals are expected to read, detail and help trainee refine details of report. The training curriculum each of you are using needs to be consistent.

Chief Jonsen believes in the professionalism of the department and expects to turn out quality employees. The chief wants the best representation of the department and considers each corporal to be the best of the best. The chief takes pride in talking about all of you and expects you to self-elevate and achieve a higher standard. There is a one year one year training period intended for you to demonstrate your ability to handle this position.

Corporals are not just training officers or just fill in for sergeants, chief believes you are all leaders and you are all independent thinkers that can bring ideas and leadership to the department. Menlo Park is evolving and changing the service that is delivered to the community. Officers do a great job arresting and finding bad guys and lowering crime stats, the department does that exceptionally well. If there is a new or different way to serve the community better, we should do so. Are we going down the right path? Is the path clear? Corporals, like everyone else are asked to submit ideas that help the department evolve with the times. If the department is going in a direction that does not seem right for the organization, everyone should be comfortable bringing it to command staff, sergeants or any level. This includes bringing solutions instead of complaints and clarifying a situation instead of perpetuating rumors. What is said in a meeting and how it is conveyed to the officers can be very different things, communication is very important.

Uniforms, interactions and trainee relationships should all be the best reflection of the department. Commander Dixon is currently working on the uniform policy. How we look and how we represent ourselves is important to the chief. Always try to look the best you can. This includes anyone in the department from officers to commanders. The chief expects professionalism in each aspect.

Briefing Training

Briefing training will be done every day, there will be a section in the daily to include the training that was completed during briefing. Patrol needs to show due diligence that we are training officers daily on everything from big 9 to current policy updates.

FTO Update

The last week of July was the first week of FTO for Eddie Mazon and Dan Rojas. There are two new officer trainees currently in the academy. Jeff Cooley will be mentoring Officer Wilson and David Apple will be mentor to Officer Victor. If we want to produce the best product, how do we do it? Who is a better first phase trainer and who is a better third phase? Consistency is key with the FTO program and other programs within the department.

Round Table

Sergeant Ortega:

- Recently, the kid's triathlon a basketball tournament and two large library events all took place on the same day which resulted in a citywide calendar which reflects events taking place within the city. All attendees were forced to use same parking lot which resulted in a great deal of congestion.
- Connoisseur's Marketplace went well and officers did a good job.

- National Night Out took place on August 4th. There were seven participating locations.
- Relay for Life took place on Saturday, August 8th from 1100 Saturday until Sunday morning at 0800. The department honored Dag and Detective Knopp completed 10 miles with Gert.
- Future events: August 16th North Fair Oaks Festival

Commander Beritni:

Zeleny will conduct another open carry display and is attempting to pull a film permit in front of NEA and Rosewood which is in the process of being denied. His defense is that he's making a film from August through December and he is attempting to use the permit as a means of conducting his demonstration.

Carolina Gaskin:

The department will be updating some of the equipment in the gym and some of the weights will be unavailable. Currently, the treadmill and bike are being serviced.

Nicole Acker:

- Thank you to everyone for attending Tactical First Aid/CPR training which has been POST certified.
- Range signups sheets are currently available in the sergeant's office. The dates are:
 A Side
 B Side
- DTAC & Taser training will be one hour long and officers will shoot their Taser cartridges in an attempt to make sure everyone is on the same cycle.
- Level 2 is a production company that was originally contacted by the city and will now be used to make a department video. Filming will begin on Aug 22nd and will include all aspects of the department. Please bring any department ideas/aspects that you would like captured to Nicole.
 Their website is level2p.com

Sergeant Brackett:

Corporal Luevano has been running team as the sergeant while Sergeant Brackett ran a beat. This turned into a great learning opportunity for Corporal Luevano and the team was receptive.

Corporal Adair:

- Members of the gang unit have been testifying as experts in Santa Clara County and have been very involved in Taliban convictions. Santa Clara has been very happy with Menlo's participation and expertise.
- SWAT - Best of West & Urban Shield are both upcoming. All Menlo Park officers finished number 1, 2, & 3. Adair provided SWAT sniper training to kids at a summer camp.

Sergeant Soares:

- Dispatch had difficulty with Blackboard procedures for an incident involving a child with autism that occurred over the weekend. Another incident involving a 10-65 from Ivy produced some of the same issues.
- Drop down holsters for officers need to be expedited due to the lack of space on their gun belt with all the tools that are currently carried.
- If you are approached by a Redwood City officer asking questions regarding the Gateway Apartments, do not answer any questions. This is an ongoing situation and the officer may be affiliated with a law office seeking information.

Sergeant Kaufman:

- Detectives have been working with Florida ICAC who have been Code 5ing a property on Chilco. On August 24th there will be a briefing with the agency and detectives will assist in a detail to conclude the case they have been working.
- Shannon Cardinez embezzlement case – Detective Dixon did a great job with the search warrant and follow up.

Commander Dixon:

Bike thefts are on the rise at the library. Both shifts please spot check library and civic center.

Charlie Manning:

Thank you to everyone for being patient with trainees. Bonny will be cleared to work solo but is unaccustomed to self-initiated work. Jessica and Rianna are still very new and working toward their release date to work solo.

Corporal Douglas:

Range training is coming up so have your guns clean. The department currently has a good supply of ammo.

Sergeant Ortega:

The department hosted a DUI checkpoint on 24th July. Thank you to Sgt. Kaufman for a great deal of assistance and guidance. There were no DUI drivers screened out of 1,000 drivers. There were many 14601 & 12500 cites. Event went smoothly. More cops would have been great. Pacifica PD lent the department their trailer and lighting.

Corporal Weber:

- Reitzell was just sentenced 30 years to life for the drunk driving incident that killed the Singh couple.
- Facebook bikes have been reported stolen through a third party security company. They have been both on viewed and tracked through GPS devices. One subject was apprehended but Facebook then did not want to prosecute. There are too many legal complications with not arresting these individuals so follow through as you normally would regardless of the decision of Facebook. Criminals will be held accountable

Corporal Luevano:

- FTO school last week.
- With Detective Cooley, he recently worked with Eddie Mazon and Dan Rojas on D-Tac basics.

Departures at the city level include Assistant City Manager Starla Jerome-Robinson, Finance Director Drew Corbett and Public Works Director Jesse Quirion.

There is enough talent in this department to train and develop others to be what we want the department to be. If you know someone that you think may be a good fit for the department, discuss this with your supervisor so it can be brought to the chief's level.

Are there any technology needs for the department that we currently need to upgrade or incorporate into our services? If you see a way to take something and incorporate it then let your supervisor know.

There have been certain incidents where the DA's Office will not prosecute a case. Our job cannot be altered by whether or not the DA's office will or will not prosecute. We still have an obligation to the community to follow through as we normally would.

Dates to remember:

Holiday party December 5th

Lou retirement September 15th

Exhibit Y



City of Menlo Park 701 Laurel Street Menlo Park, CA 94025
 Building Inspection Department
 Phone:(650) 330-6704

PERMIT

Page 1 of 2

Permit No.: FILM2017-003 Project Address: 1 PROJECT

11/29/2017

Assessor's Parcel Number: 133010010

Project Name: SAND HILL RD

Applied: 11/29/2017

Type of Work:

Type Const:

Occupancy:

Issued: 11/29/2017

Permit To Do: FILM TESLA CAR ON SAND HILL RD. FOR TV
 SHOW-BILLIONS

Expire Date:

Final:

Owner's Name:

Valuation:

Contractor:

Architect:

Engineer:

Designer:

<u>Fee Description</u>	<u>Fee Amount</u>	<u>Amount Paid</u>	<u>Date Paid</u>	<u>Balance Due</u>
** Administrative Fees **	\$300.00	300.00	11/29/17	0.00
Total Fees:	300.00	Total Fees Due:		0.00

This receipt certifies that on the date(s) shown in the "Date Paid" column above, the City of Menlo Park imposed the above itemized fees, dedications, reservations or exactions (collectively "fees"). The project applicant is hereby notified that he/she has **90 calendar days** from the date of payment as shown on this receipt to protest, in writing, in accordance with California Government Code §66020(a), any and all fees. Any party timely filing a protest may file an action to attack, review, set aside, void or annul the imposition of the fees within 180 days from the date of this notice.

**This permit shall be posted on job site until project
 has received an approved final inspection**



MP001768

Permit No.: FILM2017-003 **Project Address:** 1 PROJECT**11/29/2017****Assessor's Parcel Number:** 133010010

An application for a building permit has been submitted in your name listing yourself as builder of the property improvements specified.

For your protection, you should be aware that as "Owner-Builder" you are the responsible party of record on such a permit. Building permits are not required to be signed by property owners unless they are personally performing their own work. If your work is being performed by someone other than yourself, you may protect yourself from possible liability if that person applies for the proper permits in his or her name.

Contractors are required by law to be licensed and bonded by the State of California, and may be required to have a business license from the city or county. They are also required by law to put their license number on all permits for which they apply.

If you plan to do your own work, with the exception of various trades that you plan to sub-contract, you should be aware of the following information for your benefit and protection:

If you employ or otherwise engage any person other than your immediate family, and the work (including materials and other costs) is \$200 or more for the entire project, and such persons are not licensed as contractors or sub-contractors, then you may be an employer.

If you are an employer, you must register with the State and Federal governments as an employer and you are subject to several obligations including State and Federal income tax withholding, Federal Social Security taxes, Workers' Compensation Insurance, Disability Insurance costs, and unemployment compensation contributions.

There may be financial risks to you if you do not carry out these obligations and these risks are especially serious with respect to Workers' Compensation Insurance.

For more specific information about your obligations under Federal law, contact the Internal Revenue Service (and, if you wish, the U. S. Small Business Administration). For more specific information about your obligations under the State law, the Department of Benefit Payments and the Division of Industrial Accidents may be contacted.

If the structure is intended for sale, property owners who are not licensed contractors are allowed to perform their work personally or through their own employees, without a licensed contractor or subcontractor, only under limited conditions.

A frequent practice of unlicensed persons professing to be contractors is to secure an "Owner-Builder" building permit, erroneously implying that the property owner is providing his or her own labor and material personally. Building permits are not required to be signed by property owners unless they are performing their own work personally.

Information about licensed contractors may be obtained by contacting the Contractors' State License Board at 1020 "N" Street, Sacramento, CA 95814

The State of California Health and Safety Code, Section 19830, Chapter 9, Part 3, Division 13, requires us to make you aware of these laws and ordinances, and requires you to complete the attached form and return it to us before we may issue your permit.

Any contractor you list must have his State Contractors license number on file in this Department, and a current, valid Certificate of Workers' Compensation Insurance (or waiver) also on file in this Department.

If you are hiring someone other than a contractor to do the work, your Workers' Compensation Insurance must be on file in this Department in the form of a valid, current certificate from your Insurance Agent.



City of Menlo Park
Engineering Division
701 Laurel Street
Menlo Park, CA 94025
Telephone (650) 330-6740

PERMIT NO.: _____
Keep this permit at the work site at all times

Call 24 hours in advance of working in the public right of way AND for each inspection request.
Uninspected work will be rejected.

ENCROACHMENT PERMIT APPLICATION

- ☐ Major Encroachment
☐ Minor Encroachment

- ☐ Temporary Encroachment
☐ Debris or Container Box

- ☒ Other **FILM PERMIT**
☐ City-Mandated Repairs

ONE PERMIT PER ADDRESS

Location of Work <i>Sandhill ROAD between Highway 280 & Alpine Rd.</i>	Applicant Represents <input checked="" type="checkbox"/> Contractor <input type="checkbox"/> Owner		Applicant e-mail: <i>mrieth@jabro.com</i> Applicant fax: _____		
Name of Applicant (person) <i>Matthew R. Rute</i>	Address <i>268 NORMAN AVE #2A</i>	City <i>BROOKLYN</i>	State <i>NY</i>	Zip <i>11222</i>	Telephone <i>510.282.8497</i>
Name of Contractor <i>THE POSSIBLE PRODUCTIONS INC</i>	Address	City	State	Zip	Telephone
California Construction License No.	Menlo Park Business License No.	Est. Start Date <i>Dec. 2</i>	Est. Complete Date <i>Dec. 3 (rain date)</i>		
Estimated Construction Cost (Estimate work in city R/W only. Do not include value of utility.) \$ _____	Bond or Deposit * \$ _____	Bond or Deposit provided by: <input type="checkbox"/> Contractor <input type="checkbox"/> Owner <input type="checkbox"/> Other (provide name, company, address)			

Description of work to be done:

We are filming A Tesla car driving on Sandhill ROAD starting approximately near Highway 280 & will continue east through ALPINE ROAD. We will further film until El Camino Real ROAD in Palo Alto. We may also film on the same distance, westward bound. We will have one picture vehicle, one camera car, which will lead or follow the picture vehicle (2 TESLA).

Applicant submits the following:

- ☐ 3 copies of sketch or plans
☐ 3 copies of traffic control plans
☐ insurance certificate

Call Underground Service Alert (USA) at 1-800-227-2600 before you dig

GENERAL CONDITIONS OF PERMIT ATTACHED.

Signature below acknowledges that special working hours may apply – check the approved traffic control plan.

I hereby acknowledge that I have read this permit and the attached conditions, that the information given by me is correct, that I am the owner or the duly authorized agent of the owner, and that I agree to comply with the conditions and all applicable provisions of state laws, city ordinances, and the rules of any governmental agency involved.

[Signature]
Signature of Applicant
(Owner or authorized agent)

LOCATION manager
Title

11/24/17
Date

DO NOT WRITE BELOW THIS LINE -- CITY STAFF USE ONLY

Approved by Engineering Division	Date	Permit expires	Fees (retained by City)	\$
		Total Due to City	<input type="checkbox"/> Paid	\$

* Bond or deposit requests must originate from the bond/deposit provider. A copy of the original receipt must accompany the refund request. All deposits or bonds are subject to forfeiture to comply with City Codes and Ordinances.

MP001770

Film Production in Menlo Park

Film production in the City of Menlo Park must comply with following conditions:

1. Permittee shall submit in writing all pertinent details regarding the filming including the date(s) and times of the filming including time needed for set-up and take down; a description of the nature of the filming; the location of the filming; a list of all equipment involved in the filming, including cars and other vehicles; the proposed location for the parking and storage of all such vehicles and equipment; the number of cast and crew members involved in the filming; and an indication of any special needs, such as amplified noise, etc. If granted, the permit's approval will be confined to such activities, locations and time schedules as submitted and approved.
2. Three days prior to the beginning of filming, permittee shall provide written notice to residents and businesses within 200 feet of the proposed filming.
3. Permittee shall obey all City Ordinances, rules and the guidance of City supervisory employees pertaining to the use of City property, including the location, parking and storage of vehicles and equipment, crowd and traffic control, and the restoration of premises to their original condition after use for filming purposes.
4. Permittee will comply with the City of Menlo Park noise ordinance. Filming will be limited to the hours between 8:00 a.m. and 6:00 p.m. and will result in low to no noise levels. The use of any explosive, fireworks, or pyrotechnic devices is strictly prohibited.
5. Permittee shall make arrangements for traffic control satisfactory to the Menlo Park Police Department prior to filming on City streets and in other public areas. Permittee will be charged to recover the cost of traffic control provided by the City. Permittee will legally park vehicles and will not require street closure or traffic control other than what is approved.
6. Permittee shall covenant and agree to indemnify and hold harmless the City from any and all loss, cost, damages and expenses of any kind, including attorney fees, on account of personal injury or property damage resulting from any activity of Permittee on municipal property or in connection with its use of municipal property.
7. Liability insurance in no way limits the indemnity agreement above, Permittee will furnish the City a Certificate of Liability Insurance acceptable to its Risk Management office showing combined single limit coverage for bodily injury and property damage, or the equivalent of such coverage, not less than \$1 million. The City, including its officials, employees and agents, shall be named as additional insured in the Liability Policy. Contractual liability coverage insuring the obligations of this Agreement is also required. The insurance may not be canceled or substantially modified without ten (10) days written notice to the City Manager's Office.

8. Permittee shall pay, with a valid check, money order, credit card or cashier's check, a **filming permit application fee of \$150.00 in addition to the daily permit fees of \$50 per day for still photography and short subject, \$100 per day for industrials, and \$150 per day for features, TV, music videos and commercials.**
9. Permittee shall apply for a one-time Business License and pay, with a valid check, money order, credit card or cashiers check. **See Guide to Annual Business Licensee Fee Calculation** for the fee schedule.
10. Permittee will adhere to the provisions and conditions set forth in the permit. If Menlo Park Police Department or other City personnel are required to correct, mitigate, or provide any service not consented to under this permit, permittee will be required to pay for all services rendered. Payment shall be made in the form of a *valid check, money order, credit card or cashiers check* immediately upon demand made by the City.

* NOTE: WE will provide 2-3 pickup cars to provide a safety "buffer" zone around our "hero" car for safety.
PROJECT ADDRESS: Sandhill Road between Highway 280 & Alpine Rd

Read and agreed on:

Date:

11/21/17

Signature

Matthew Rintler

Print name



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/27/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher & Co. Insurance Brokers of CA., Inc. License #0726293 505 N. Brand Boulevard, Suite 600 Glendale CA 91203	CONTACT NAME: CBS Certificate Processing PHONE (A/C, No, Ext): 877-790-8155 FAX (A/C, No): 818-539-1693 E-MAIL: CBS_Certificates@ajg.com ADDRESS: CBS_Certificates@ajg.com
INSURED CBS Corporation Showtime Networks/Possible Productions Inc. 268 Norman Avenue, Suite 2A Brooklyn NY 11222	INSURER(S) AFFORDING COVERAGE INSURER A: Travelers Property Casualty Co of A INSURER B: Travelers Insurance Co of Canada INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER: 99495040

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A B	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			TC2JGLSA121D6189TIL16 234D4683	12/31/2016 12/31/2016	12/31/2017 12/31/2017	EACH OCCURRENCE \$5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$5,000,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$5,000,000 GENERAL AGGREGATE \$15,000,000 PRODUCTS - COMP/OP AGG \$5,000,000 \$
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			TC2JCAP121D6190TIL16	12/31/2016	12/31/2017	COMBINED SINGLE LIMIT (Ea accident) \$5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y / <input checked="" type="checkbox"/> N / A If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Auto Physical Damage			TC2JCAP121D6190TIL16	12/31/2016	12/31/2017	Comprehensive Ded. 2,500 Collision Ded. 2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is deemed Additional Insured as required by written or verbal contract. Refer to attached General Liability endorsement (CG T8 31) for scope of Additional Insured status. Further, the Certificate Holder is included as a Loss Payee for Auto Physical Damage if required by written or verbal contract. This Additional Insured and/or Loss Payee status arises solely as respects the filming of the motion picture and/or television production: "BILLIONS".

CERTIFICATE HOLDER

CANCELLATION

City of Menlo Park 701 Laurel Street Menlo Park, CA 94025	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
---	---

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

BLANKET ADDITIONAL INSURED
(INCLUDING PRIMARY/NON-CONTRIBUTORY AND SEPARATION OF INSURED PROVISIONS)

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED - (Section II) is amended to include any person or organization that you agree in a verbal contract or agreement or a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b) If, and only to the extent that, the injury or damage is caused by your acts or omissions or "your work" or by your subcontractor in the performance of "your work" to which the verbal contract or agreement or "written contract requiring insurance" applies.

The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

2. **LIMITATIONS**

The insurance provided to the additional insured by this endorsement is limited as follows:

- a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". In absence of a "written contract requiring insurance", the limits of insurance available to the additional insured shall be \$1,000,000 for the sum of all damages because of "bodily injury", "property damage" and "personal injury". This endorsement shall not increase the limits of insurance described in Section III - Limits of Insurance.
- b) The insurance provided to the additional insured by this endorsement shall be limited to the more restrictive of:
 - i. The scope of coverage required by contract or agreement; or
 - ii. What is insured by this Coverage Part.
- c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" unless a "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.
- d) If you have agreed to provide insurance to the additional insured pursuant to a contract or agreement with a third party media production company then the insurance provided to the additional insured shall be limited to liability for "bodily injury", "property damage" or "personal injury" caused by or arising from the specific media being produced on your behalf.

3. **PRIMARY/NON-CONTRIBUTORY AMENDMENT TO OTHER INSURANCE CLAUSE**

The insurance provided to the additional insured by this endorsement is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if a "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to other insurance available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that other insurance. But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such other insurance.

4. CONDITIONS

As a condition of coverage provided to the additional insured by this endorsement:

- a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may give rise to a claim. To the extent possible, such notice should include:
 - i. How, when and where the "occurrence" or offense took place;
 - ii. The names and addresses of any injured persons and witnesses; and
 - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b) If a claim is made or "suit" is brought against the additional insured, the additional insured, must:
 - i. Immediately record the specifics of the claim or "suit" and the date received;
 - ii. Notify us as soon as practicable; and
 - iii. See to it that we receive written notice of the claim or "suit" as soon as practicable.
- c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d) The additional insured must tender the defense and indemnity of any claim or "suit" to any provider of other insurance simultaneously which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to other insurance available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.

5. SEPARATION OF INSURED

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the First Named Insured, this insurance applies:

- a) As if each Named Insured were the only Named Insured; and
- b) Separately to each insured against whom claim is made or "suit" is brought.

6. DEFINITIONS

The following definition is added to SECTION V. – DEFINITIONS:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a) After the signing and execution of the contract or agreement by you;
- b) While that part of the contract or agreement is in effect; and
- c) Before the end of the policy period.

**Possible Productions Inc.
"BILLIONS" SEASON 3**

CREDIT INFORMATION SHEET

Fed ID# 26-3246830

Date of Incorporation: 09/04/2008

PRODUCTION OFFICE / BILLING ADDRESS:

POSSIBLE PRODUCTIONS INC.
"BILLIONS" Season 2
268 Norman Ave., Suite 2A
Brooklyn, NY 11222
347-529-4240 phone
347-721-3402 fax

BANK REFERENCE:

JP MORGAN CHASE BANK

PLEASE CONTACT IVELISSE LOPEZ AT IVELISSE.LOPEZ@PRODUCTION.SHOWTIME.NET
FOR A VENDOR SPECIFIC BANK REFERENCE DOCUMENT.

PLEASE E-MAIL DOCUMENT TO CBS.JPMC.SERVICE@JPMCHASE.COM AND COPY
SUE.POLAKOFF@CBS.COM

SIGNED LETTER SHOULD BE RETURNED IN 24-48 HOURS.

TRADE REFERENCES:

ENTERTAINMENT PARTNERS
ATTN: ACCOUNTING (ACCOUNTS RECEIVABLE)
2835 N. NAOMI STREET
BURBANK, CA 91504
(818) 955-6000

PANAVISION INTERNATIONAL LP
ATTN: ACCOUNTING (ACCOUNTS RECEIVABLE)
6219 DE SOTO AVE
WOODLAND HILLS, CA 91367
(818) 316-1000

FOTOKEM
ATTN: ACCOUNTING (ACCOUNTS RECEIVABLE)
2801 WEST ALAMEDA AVE
BURBANK CA. 91505
(818) 846-3101

TECHNICOLOR CREATIVE SERVICES USA, INC.
ATTN: ACCOUNTING (ACCOUNTS RECEIVABLE)
6040 SUNSET BLVD
HOLLYWOOD, CA 90028
(323) 817-6600

Film Production in Menlo Park

Film production in the City of Menlo Park must comply with following conditions:

1. Permittee shall submit in writing all pertinent details regarding the filming including the date(s) and times of the filming including time needed for set-up and take down; a description of the nature of the filming; the location of the filming; a list of all equipment involved in the filming, including cars and other vehicles; the proposed location for the parking and storage of all such vehicles and equipment; the number of cast and crew members involved in the filming; and an indication of any special needs, such as amplified noise, etc. If granted, the permit's approval will be confined to such activities, locations and time schedules as submitted and approved.
2. Three days prior to the beginning of filming, permittee shall provide written notice to residents and businesses within 200 feet of the proposed filming.
3. Permittee shall obey all City Ordinances, rules and the guidance of City supervisory employees pertaining to the use of City property, including the location, parking and storage of vehicles and equipment, crowd and traffic control, and the restoration of premises to their original condition after use for filming purposes.
4. Permittee will comply with the City of Menlo Park noise ordinance. Filming will be limited to the hours between 8:00 a.m. and 6:00 p.m. and will result in low to no noise levels. The use of any explosive, fireworks, or pyrotechnic devices is strictly prohibited.
5. Permittee shall make arrangements for traffic control satisfactory to the Menlo Park Police Department prior to filming on City streets and in other public areas. Permittee will be charged to recover the cost of traffic control provided by the City. Permittee will legally park vehicles and will not require street closure or traffic control other than what is approved.
6. Permittee shall covenant and agree to indemnify and hold harmless the City from any and all loss, cost, damages and expenses of any kind, including attorney fees, on account of personal injury or property damage resulting from any activity of Permittee on municipal property or in connection with its use of municipal property.
7. Liability insurance in no way limits the indemnity agreement above, Permittee will furnish the City a Certificate of Liability Insurance acceptable to its Risk Management office showing combined single limit coverage for bodily injury and property damage, or the equivalent of such coverage, not less than \$1 million. The City, including its officials, employees and agents, shall be named as additional insured in the Liability Policy. Contractual liability coverage insuring the obligations of this Agreement is also required. The insurance may not be canceled or substantially modified without ten (10) days written notice to the City Manager's Office.

8. Permittee shall pay, with a valid check, money order, credit card or cashier's check, a **filming permit application fee of \$150.00 in addition to the daily permit fees of \$50 per day for still photography and short subject, \$100 per day for industrials, and \$150 per day for features, TV, music videos and commercials.**
9. Permittee shall apply for a one-time Business License and pay, with a valid check, money order, credit card or cashiers check. See **Guide to Annual Business Licensee Fee Calculation** for the fee schedule.
10. Permittee will adhere to the provisions and conditions set forth in the permit. If Menlo Park Police Department or other City personnel are required to correct, mitigate, or provide any service not consented to under this permit, permittee will be required to pay for all services rendered. Payment shall be made in the form of a *valid check, money order, credit card or cashiers check* immediately upon demand made by the City.

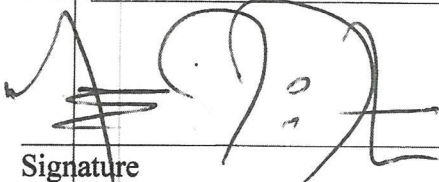
PROJECT ADDRESS: Sandhill Road between Highway 280 & Alpine Rd

Read and agreed on:

Date:

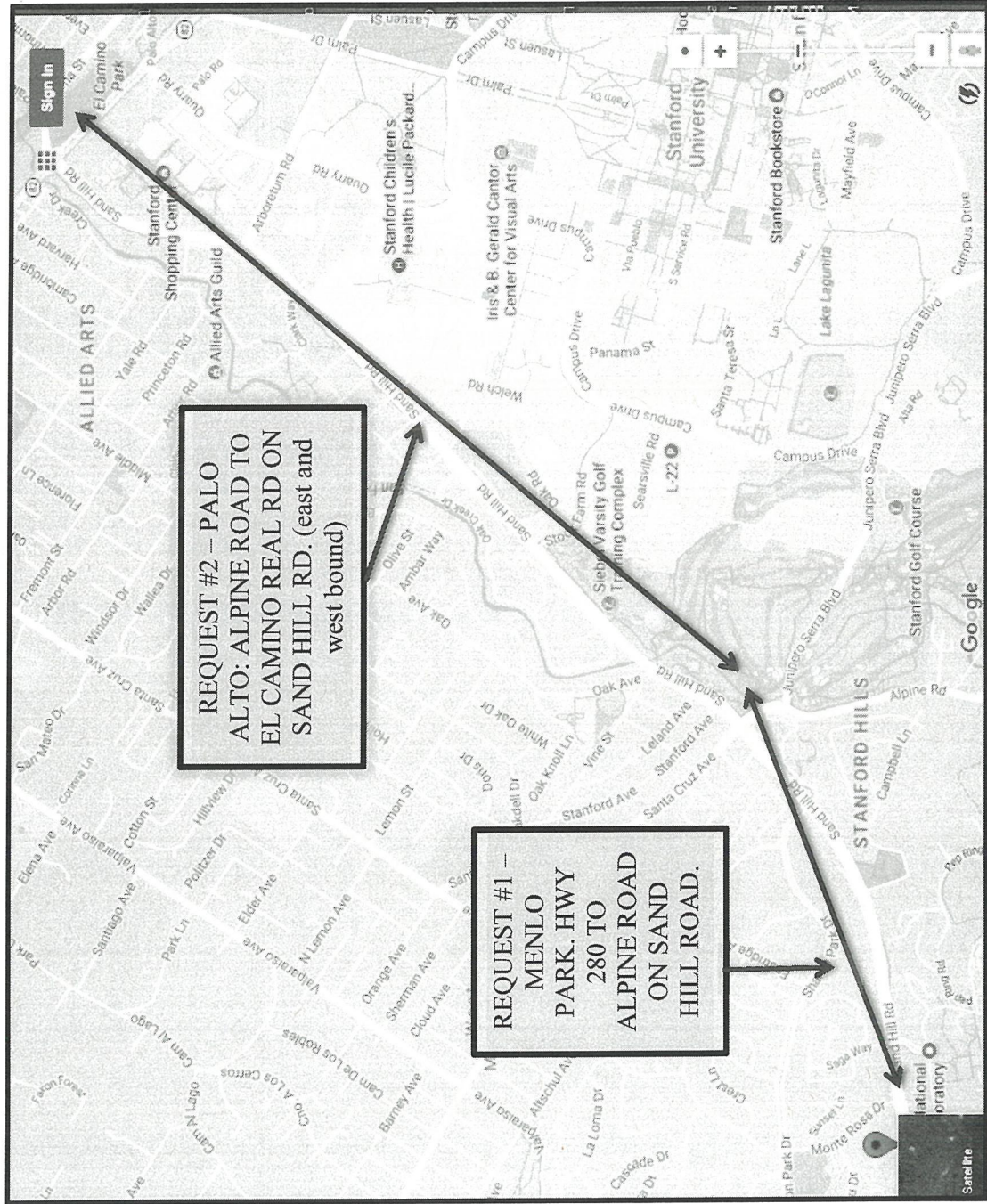
11/21/17

Signature



Print name

Matthew Rintler



**POSSIBLE PRODUCTIONS, INC.
FILM REQUEST - 12/2/17 12N TO
5:30PM**

(RAIN DATE - 12/3/17)

- One (1) camera car (30 feet long, with platforms) will follow or lead our picture ("hero" Tesla) car.
- #1 - We are requesting to film on Sand Hill Road from Highway 280 to Alpine Road (Menlo Park jurisdiction)
- #2 - We are requesting to film on Sand Hill Road, from Alpine Road to El Camino Real Road
- We are requesting to film driving east and west bound.

Exhibit *Z*

From: Bertini, David C
To: Terrence Bell
Subject: RE: Michael Zeleny EFP 12-380
Date: Tuesday, June 20, 2017 3:46:00 PM
Attachments: Notice of Appeal Zeleny June 2017.pdf
Sensitivity: Confidential

Good afternoon Terrence.

Pursuant to our conversation last week, I am checking in with you regarding the request I have made. I have yet to hear from the Director's Office regarding our request.

The Public Hearing has now been set for August 29, 2017, and I have attached the notice of appeal to the Menlo Park City Council. Perhaps you can forward this document to the Director.

I look forward to your department's continued assistance in this very serious matter.

Regards,

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

From: Terrence Bell [mailto:Terrence.Bell@doj.ca.gov]
Sent: Tuesday, June 13, 2017 10:54 AM
To: Bertini, David C <dcbertini@menlopark.org>
Subject: RE: Michael Zeleny EFP 12-380
Sensitivity: Confidential

Good morning Commander Bertini,

Just a quick update. I was informed last Wednesday, this is being reviewed by the Bureau of Firearms Director. I am unable to give you a definitive timeframe for response since this extends beyond the limits of my capacity, but I would expect a response within a reasonable amount of time – based the information I provided, which constituted our previous conversation. Again, I apologize for the length of time it has taken to resolve this matter.

Regards,

Terrence Bell, Manager
Firearms Permit Section
Bureau of Firearms
Department of Justice
916 227-3064

EXHIBIT

0270

MP00

From: Bertini, David C [<mailto:dcbertini@menlopark.org>]
Sent: Thursday, June 01, 2017 8:53 AM
To: Terrence Bell <Terrence.Bell@doj.ca.gov>; Jerrica Ramey <Jerrica.Ramey@doj.ca.gov>
Subject: RE: Michael Zeleny EFP 12-380
Importance: High
Sensitivity: Confidential

Good morning Terrence.

I am checking in as I have not heard from you regarding this issue.

Do you happen to have a timeframe for any action by your agency? I have not been contacted by the Director of anyone in your Investigations Division.

Perhaps you can give me the contact information of the Director and I could contact them directly.

We have been postponing Zeleny's appeal which will be heard by our City Council in a public hearing and I need this follow up completed before that. I understand you recently took over this position but I have been asking for this information since September of 2016.

Thank you.

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

From: Terrence Bell [<mailto:Terrence.Bell@doj.ca.gov>]
Sent: Wednesday, April 26, 2017 10:11 AM
To: Bertini, David C <dcbertini@menlopark.org>; Jerrica Ramey <Jerrica.Ramey@doj.ca.gov>
Subject: RE: Michael Zeleny EFP 12-380
Sensitivity: Confidential

Good Morning Commander Bertini,

This issue has been escalated to the Bureau of Firearms Director and is currently under review for how to proceed. I have sent emails following-up on this situation, including this morning; hopefully, I can receive an update soon to provide to you. I understand the urgency of this matter and seek to have resolution as quickly as possible.

Thank you,

Terrence Bell,
Firearms, Records, Licensing and Permit Section
Bureau of Firearms
Department of Justice
916 227-3064

From: Bertini, David C [<mailto:dcbertini@menlopark.org>]
Sent: Wednesday, April 26, 2017 9:46 AM
To: Jerrica Ramey <Jerrica.Ramey@doj.ca.gov>; Terrence Bell <Terrence.Bell@doj.ca.gov>
Subject: RE: Michael Zeleny EFP 12-380
Sensitivity: Confidential

Good morning Terrence and Jerrica.

I was just looking for an update of my discussion with both of you on March 22 and 23rd regarding Michael Zeleny EFP 12-380.

I have not heard back from nor have I ever heard from your Investigation Division.

Any update would be appreciated.

Thank you.

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

From: Bertini, David C
Sent: Wednesday, March 22, 2017 3:33 PM
To: 'jerrica.ramey@doj.ca.gov' <jerrica.ramey@doj.ca.gov>
Subject: FW: Michael Zeleny EFP 12-380
Importance: High
Sensitivity: Confidential

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

From: Bertini, David C
Sent: Wednesday, September 14, 2016 3:30 PM

MP000885

To: elene.mcgee@doj.ca.gov

Subject: Michael Zeleny EFP 12-380

Importance: High

Sensitivity: Confidential

Elene,

Thank you for taking the time to speak to me today. I wanted to give you more information to forward to your Enforcement Unit. I have attached several documents including: Zeleny's permit, denial letters from the City and his email responses.

Thank you again for looking into this matter.

Feel free to contact me if you have any further questions.

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

From: Bertini, David C
Sent: Wednesday, September 14, 2016 2:32 PM
To: 'elene.mcgee@doj.ca.gov'
Subject: Zeleny

Per our discussion.....

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy all copies of the communication.

Exhibit AA

From: Sohrabi, Ebby
To: Toews, Ivan J
Subject: FW: Zeleny - Film Permit
Date: Tuesday, September 19, 2017 1:30:30 PM

Ivan,
Please follow up as we discussed.
Thanks,
-Ebby

-----Original Message-----

From: Bertini, David C
Sent: Tuesday, September 12, 2017 1:44 PM
To: Heineck, Arlinda A <AAHeineck@menlopark.org>
Cc: Nagaya, Nicole H <nhnagaya@menlopark.org>; Sohrabi, Ebby <ebsohrabi@menlopark.org>
Subject: Re: Zeleny - Film Permit

Hello all.

Thanks for the info Linda. Nikki, feel free to call me on my cell phone when you want to discuss. I am at home but now off the major pain killers so should be coherent!

650.353.6640

Dave

Sent from my iPad

> On Sep 11, 2017, at 15:48, Heineck, Arlinda A <AAHeineck@menlopark.org> wrote:

>

> Hi Dave: Film permits are handled by Ivan Toews in Public Works. However, thinking that Ivan will benefit from guidance in this particular case, I spoke with Nikki. She suggested that you connect first with her and Ebby so that they can gain a solid understanding of the situation.

>

> Thanks,

> Linda

>

> -----Original Message-----

> From: Bertini, David C

> Sent: Monday, September 11, 2017 12:45 PM

> To: Heineck, Arlinda A <AAHeineck@menlopark.org>

> Subject: Zeleny - Film Permit

>

> Hello Arlinda.

>

> You are probably familiar with Zeleny and his attempt to get a "Special Event's Permit" to conduct his protest on Sandhill which was denied by City Council. He has now transitioned to requesting a film permit. Can you confirm that the film permit process is handled by your shop? If so, can you give me a contact person who would be involved in the process?

>

> Thanks!

>

> Dave

>

> Sent from my iPad



MP001225

Exhibit BB

From: [Bertini, David C](#)
To: [Nagaya, Nicole H](#)
Subject: RE: Zeleny
Date: Wednesday, September 20, 2017 12:35:00 PM

Hey Nikki.

Yeah I am actually sorry I can't make it. The after class time was always very fun!

I received an email from Ivan asking for Zeleny's contact info. I told him that we should have the city attorney communicate with him. Do you know who would now take the lead on a film permit or encroachment permit?

Dave

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

-----Original Message-----

From: Nagaya, Nicole H
Sent: Wednesday, September 20, 2017 6:45 AM
To: Bertini, David C <dcbertini@menlopark.org>
Subject: RE: Zeleny

Hi Dave,

Sorry, I just caught up with Ebby (Senior Civil Engineer who oversees Land Development and our permits) on this yesterday (Tuesday) morning, and he also wasn't aware of the fact that we issued film permits. He's looking into it and will email back the group with more information. If we don't have specific info, we plan to treat it similarly to an encroachment permit (which is administrative action by staff, with potential to be appealed to Council).

PS Shadowed the chief yesterday through interviews for new officers. Looks like you have some good candidates! Sorry to hear you won't make it to the retreat. Won't be the same without you there!

Thanks,
Nikki

-----Original Message-----

From: Bertini, David C
Sent: Monday, September 18, 2017 3:02 PM
To: Nagaya, Nicole H <nhnagaya@menlopark.org>
Subject: Zeleny

Hey Nikki....have you had the chance to review the film permitting process? The city attorney wants to respond to him in the next couple of days.

Thanks!

Dave

Sent from my iPhone

Exhibit CC

From: [Bertini, David C](#)
To: [Harada, Jelena V](#); [Curtin, Clay J](#)
Subject: Zeleny PPT
Date: Tuesday, August 29, 2017 10:01:00 AM
Attachments: [Zeleny City Council Hearing Appeal 8-29-17.pptx](#)

Good morning Clay and Jelena.

Attached is the PPT for the hearing today. Can we get it on the Council Chamber's computer?

Thanks!

PS-we will have a strong police presence at the meeting....

Commander Dave Bertini
Menlo Park Police Department
701 Laurel Street
Menlo Park, CA. 94025
650.330.6321

EXHIBIT

0271

MP00



MENLO PARK CITY COUNCIL

August 29, 2017 – Appeal of Special Events Permit Denial

HEARING PURPOSE

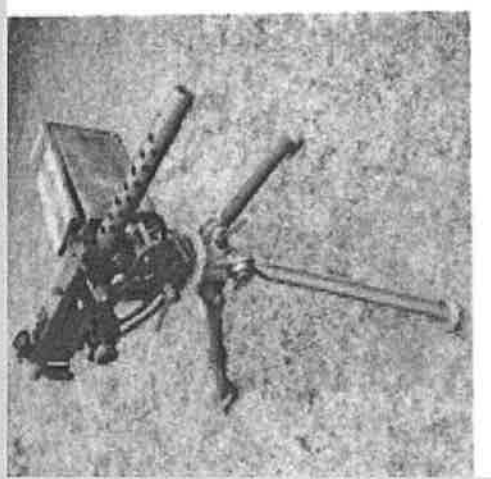


- The City Council is the final arbiter in cases where a Special Events Permit has been denied
- The City Council should consider whether to uphold or overturn the denial of the Special Events Permit submitted by the appellant, Michael Zeleny



BACKGROUND

- July 10, 2015 – Appellant Zeleny submits a “Special Event” application with a stated purpose of “Outing New Enterprise Associates as the corporate sponsors of incestuous child rapist Min Zhu”
 - Location to be the “median strip” in front of 2825 Sand Hill
 - Term of the “event” was listed as indefinite, and later changed to 31 days for 13 hours a day
 - Event will be “multimedia” showing images on a portable monitor or screen
 - Application states “I will be present...equipped with fully operational, exposed and loaded firearms, in full compliance with all applicable laws.”
- Appellant Zeleny later provides sample of images he intends to display along with the type of weapons he intends to possess.



PERMIT DENIED



- The permit is denied by the Special Event Permit Committee and Community Serviced Director for the following reasons:
 - No term was attached to the “special event”
 - Open carry or concealed carrying of firearms in a public place is prohibited by law
 - The City has not authorized Appellant as an “authorized” participant in a motion picture or entertainment event; nor has Appellant sought a film production permit
 - Public safety and traffic concerns
- Appellant Zeleny is advised that denial does not infringe upon his 1st Amendment right to protest as long as he is complying with the law
- He is also advised of his right to appeal to the City Manager

STATE LAWS HAVE CHANGED



- 26350(a)(1) CA Penal Code - enacted in 2011, making it a crime to “open carry” unloaded handguns in a public place (AB 144)
- 26400(a) CA Penal Code – enacted in 2012, making it a crime to “open carry” unloaded firearms that are not handguns (rifles, shotguns, etc.) in a public place (AB 1527)
- Exception to the above laws include the display of firearms loaned as props for motion picture or public entertainment activities

APPEAL TO CITY MANAGER



- Appellant appealed the Community Service Director's decision to the City Manager
- August 11, 2016 – in person hearing conducted with the City Manager
- Appellant Zeleny produces an “Entertainment Firearms Permit” from DOJ
 - Permit expired July 12, 2017
 - Intended use for prop masters to lend firearms for motion picture filming
- Appellant raised the argument that since he is recording his activities, he is therefore producing an entertainment event and pursuant to this permit he may carry firearms

APPEAL IS DENIED



- September 12, 2016 – Appeal is denied by the City Manager and a letter is transmitted, which include the following reasons for denial:
 - Special Events Permits are not intended to regulate protests or filming of protests
 - Display of loaded or unloaded firearms in public is prohibited by law
 - Public Rights-of-Way would be compromised and the intended display would violate several vehicle and municipal code sections
 - Public safety concerns including placement of a video display which could interfere with traffic and using the median of a busy arterial near a multi-lane freeway to gather would be unsafe
- Appellant Zeleny is again advised that no permit is necessary for a lawful protest

STAFF RECOMMENDATION



- Staff recommends that the City Council deny the appeal and therefore uphold the City Manager's decision to uphold staff's denial of the Special Events Permit
- Appellant Zeleny has been notified that no permit is necessary for a peaceful protest, as long as all applicable laws and ordinances are followed



QUESTIONS

Exhibit DD

1 XAVIER BECERRA
Attorney General of California
2 ANTHONY R. HAKL
Supervising Deputy Attorney General
3 NOREEN P. SKELLY
Deputy Attorney General
4 JOHN W. KILLEEN
Deputy Attorney General
5 State Bar No. 258395
1300 I Street, Suite 125
6 P.O. Box 944255
Sacramento, CA 94244-2550
7 Telephone: (916) 210-6045
Fax: (916) 324-8835
8 E-mail: John.Killeen@doj.ca.gov
*Attorneys for Defendant Attorney General Xavier
9 Becerra*

10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 **MICHAEL ZELENY, an individual,**

16 Plaintiff,

17 v.

18 **GAVIN NEWSOM, an individual, in his**
19 **official capacity; XAVIER BECERRA, an**
20 **individual, in his official capacity; CITY OF**
21 **MENLO PARK, a municipal corporation;**
and DAVE BERTINI, in his official
capacity,

22 Defendants.
23

3:17-cv-07357 RS

**DEFENDANT ATTORNEY GENERAL
XAVIER BECERRA'S SECOND
AMENDED RESPONSES TO
PLAINTIFF MICHAEL ZELENY'S
INTERROGATORIES, SET TWO**

24 PROPOUNDING PARTY: Plaintiff Michael Zeleny

25 ANSWERING PARTY: Defendant Attorney General Xavier Becerra

26 SET NUMBER: Two
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Defendant Becerra objects to each interrogatory to the extent that it calls for the disclosure of information protected from disclosure by the attorney work-product doctrine, the attorney-client privilege, the deliberative process privilege and/or any other applicable privilege or protection. Should Defendant Becerra disclose any privileged or otherwise protected information in these responses, the disclosure is inadvertent and does not constitute a waiver of the privilege or protection.

Defendant Becerra has not completed the investigation of the facts and issues relating to Plaintiff Zeleny's claims and has not completed discovery in this action. All of the answers contained herein are based solely upon information and documents which are presently available to, and specifically known by, Defendant Becerra, and the answers disclose only those contentions which presently occur to Defendant Becerra. Further discovery, independent investigation, legal research and analysis may supply additional facts and may lead to additions, changes, and variations from the answers herein.

28

1 Defendant Becerra incorporates by reference every general objection set forth above into
2 each specific answer set forth below. A specific response may repeat a general objection for
3 emphasis or some other reason. The failure to include a general objection in any specific answer
4 does not waive any general objection to that interrogatory.

5 **INTERROGATORY NO. 22:** Is an individual who has a valid “entertainment firearms
6 permit” issued pursuant to Penal Code § 29500 an “authorized participant” within the meaning of
7 Penal Code §§ 26375 and 26405(r)?

8 **INITIAL RESPONSE TO INTERROGATORY NO. 22:**

9 Defendant Becerra incorporates by reference the above-stated general objections as though
10 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it poses
11 a question of pure law. Defendant Becerra is not required to respond to interrogatories raising
12 questions of pure law. See *AngioScore, Inc. v. TriReme Med., Inc.*, No. 12-cv-03393-YGR (JSC),
13 2014 WL 7188779, at *5 (N.D. Cal. Dec. 16, 2014) (“[I]nterrogatories directed to issues of ‘pure
14 law’—i.e., abstract legal issues not dependent on the facts of the case are not permitted”) (citation
15 and some internal punctuation omitted). Defendant Becerra also objects to this interrogatory
16 because it calls for him to interpret what the Legislature intended when it drafted any of the
17 statutory provisions at issue in this case.

18 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
19 follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
20 “authorized participant.” Thus, what the Legislature intended by that phrase is a question of
21 statutory interpretation.

22 However, according to the Legislative history of Penal Code § 26375, that section permits
23 the use of unloaded handguns as an “entertainment props.” (See DOJ 000219) Additionally, the
24 Entertainment Firearms Permit authorizes the permit holder “to possess firearms loaned to the
25 permitholder for use solely as a prop in a motion picture, television, video, theatrical, or other
26 entertainment production or event.” (Penal Code § 29500.) Thus, it is possible to infer that the
27 Legislature intended the exceptions set forth in Penal Code §§ 26375 and 26405, subdivision (r)
28 to be available only to those using unloaded firearms loaned to them for use as “entertainment

1 props” in a motion picture, television, video, theatrical, or other entertainment production or
2 event.

3 **AMENDED RESPONSE TO INTERROGATORY 22:**

4 Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
5 “authorized participant.” Defendant Becerra has never issued a formal opinion under California
6 law regarding the meaning of the phrase “authorized participant,” and this response is not such an
7 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable
8 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
9 Defendant Becerra played no material role in the events described in the complaint, and was not
10 involved in the denial of Plaintiff Michael Zeleny’s permit application(s).

11 Based on Defendant Becerra’s understanding of Plaintiff Zeleny’s situation, in the specific
12 context of this case, an individual who has a valid “entertainment firearms permit” issued
13 pursuant to Penal Code § 29500 could be an “authorized participant” within the meaning of Penal
14 Code §§ 26375 and 26405(r) for the very narrow purpose of having a defense against a
15 prosecution of open carry laws, if that individual were using the weapon as a prop in a motion
16 picture, television, video, theatrical, or other entertainment production or event. However, that
17 individual would not be immune from other regulation of their activities.

18 **SECOND AMENDED RESPONSE TO INTERROGATORY NO. 22:**

19 Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
20 “authorized participant.” Defendant Becerra has never issued a formal opinion under California
21 law regarding the meaning of the phrase “authorized participant,” and this response is not such an
22 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable
23 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
24 Defendant Becerra played no material role in the events described in the complaint, and was not
25 involved in the denial of Plaintiff Michael Zeleny’s permit application(s).

26 Based on Defendant Becerra’s understanding of Plaintiff Zeleny’s situation, in the specific
27 context of this case, an individual who has a valid “entertainment firearms permit” issued
28 pursuant to Penal Code § 29500 would be an “authorized participant” within the meaning of

1 Penal Code §§ 26375 and 26405(r) for the narrow purpose of having a defense against a
2 prosecution of open carry laws, if that individual were using the weapon as a prop in a motion
3 picture, television, video, theatrical, or other entertainment production or event. However, that
4 individual would not be immune from other regulation of their activities.

5 **INTERROGATORY NO. 23:** State all facts supporting your response to the preceding
6 interrogatory.

7 **INITIAL RESPONSE TO INTERROGATORY NO. 23:**

8 Defendant Becerra incorporates by reference the above-stated general objections as though
9 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it poses
10 a question of pure law. Defendant Becerra is not required to respond to interrogatories raising
11 questions of pure law. See *AngioScore, Inc. v. TriReme Med., Inc.*, No. 12-cv-03393-YGR (JSC),
12 2014 WL 7188779, at *5 (N.D. Cal. Dec. 16, 2014) (“[I]nterrogatories directed to issues of ‘pure
13 law’—i.e., abstract legal issues not dependent on the facts of the case are not permitted”) (citation
14 and some internal punctuation omitted). Defendant Becerra also objects to this interrogatory
15 because it calls for him to interpret what the Legislature intended when it drafted any of the
16 statutory provisions at issue in this case.

17 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
18 follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
19 “authorized participant.” Thus, what the Legislature intended by that phrase is a question of
20 statutory interpretation.

21 However, according to the Legislative history of Penal Code § 26375, that section permits
22 the use of unloaded handguns as an “entertainment props.” (See DOJ 000219) Additionally, the
23 Entertainment Firearms Permit authorizes the permit holder “to possess firearms loaned to the
24 permitholder for use solely as a prop in a motion picture, television, video, theatrical, or other
25 entertainment production or event.” (Penal Code § 29500.) Thus, it is possible to infer that the
26 Legislature intended the exceptions set forth in Penal Code §§ 26375 and 26405, subdivision (r)
27 to be available only to those using unloaded firearms loaned to them for use as “entertainment
28

1 props” in a motion picture, television, video, theatrical, or other entertainment production or
2 event.

3 **AMENDED RESPONSE TO INTERROGATORY 23:**

4 Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
5 “authorized participant.” Defendant Becerra has never issued a formal opinion under California
6 law regarding the meaning of the phrase “authorized participant,” and this response is not such an
7 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable
8 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
9 Defendant Becerra played no material role in the events described in the complaint, and was not
10 involved in the denial of Plaintiff Michael Zeleny’s permit application(s).

11 Based on Defendant Becerra’s understanding of Plaintiff Zeleny’s situation, in the specific
12 context of this case, the Department of Justice’s Entertainment Firearms Permit only authorizes
13 the permit holder “to possess firearms loaned to the permitholder for use solely as a prop in a
14 motion picture, television, video, theatrical, or other entertainment production or event.” (Penal
15 Code § 29500.) Anyone who is not otherwise authorized to carry a weapon openly, but who
16 desires to carry a weapon openly “as a prop in a motion picture, television, video, theatrical, or
17 other entertainment production or event” would need to do so under the auspices of an
18 Entertainment Firearms Permit.

19 The Attorney General understands this exception to have been carried forward into the open
20 carry laws, as the legislative history of Penal Code § 26375 refers to the use of unloaded
21 handguns as an “entertainment props.” (See DOJ 000219.) Thus, the exceptions set forth in
22 Penal Code §§ 26375 and 26405, subdivision (r) are available only to those using unloaded
23 firearms loaned to them for use as “entertainment props” in a motion picture, television, video,
24 theatrical, or other entertainment production or event.

25 While the Department of Justice “authorizes” the use of firearms in this narrow context
26 through the issuance of Firearms Entertainment Permits, such authorization is in the nature of a
27 defense to an open carry prosecution within the very narrow context of an entertainment prop, not
28 a preclusion of any other regulation by other agencies. Other law enforcement agencies would

1 not be precluded from ensuring that an individual carrying a weapon openly had a permit, or
2 ensuring that an identified individual is not violating any other federal, state, or local laws or
3 ordinances. Notably, when issuing the Firearms Entertainment Permit, the Department does not
4 verify the nature of the entertainment event or impose any restrictions on how a weapon might be
5 carried or used, but only looks to see if a person is prohibited from owning firearms. In this
6 sense, the Firearms Entertainment Permit is a floor rather than a ceiling, with possible room for
7 other law enforcement agencies to determine, for example, that the open carry of weapons
8 endangered public safety, or was a nuisance, or that someone's conduct was not a "production or
9 event" covered by the relevant exception, or that someone was not violating other laws.

10 Also, within the structure of the open carry laws, the exception for an authorized participant
11 appears to be analogous to similar exceptions for gun shows (Pen. Code § 26369) or target ranges
12 (Pen. Code § 26365)—defined spaces in which the weapon being carried is not easily visible or
13 accessible to the public. The Attorney General understands the Firearms Entertainment Permit,
14 and the corresponding exceptions to the open carry laws, to apply to confined, non-public spaces
15 for a limited period of time, i.e., in a movie studio or clearly defined production area. To the
16 extent that an individual like Mr. Zeleny seeks to demonstrate on a public street with an unloaded
17 firearm in an unconfined area and/or for an indefinite period of time, the Attorney General views
18 the open carrying of unloaded weapons on a public street, in an unconfined area fully visible to
19 and accessible by anyone else, and not within what would reasonably be considered a defined,
20 enclosed production area, to potentially be conduct outside the scope of the Firearms
21 Entertainment Permit and the corresponding exception to the open carry laws, and potentially
22 subject to enforcement by the law enforcement agency primarily responsible for enforcing the
23 open carry laws in that area.

24 **SECOND AMENDED RESPONSE TO INTERROGATORY NO. 23:**

25 Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
26 "authorized participant." Defendant Becerra has never issued a formal opinion under California
27 law regarding the meaning of the phrase "authorized participant," and this response is not such an
28 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable

1 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
2 Defendant Becerra played no material role in the events described in the complaint, and was not
3 involved in the denial of Plaintiff Michael Zeleny's permit application(s).

4 Based on Defendant Becerra's understanding of Plaintiff Zeleny's situation, in the specific
5 context of this case, the Department of Justice's Entertainment Firearms Permit only authorizes
6 the permit holder "to possess firearms loaned to the permitholder for use solely as a prop in a
7 motion picture, television, video, theatrical, or other entertainment production or event." (Penal
8 Code § 29500.) Anyone who is not otherwise authorized to carry a weapon openly, but who
9 desires to carry a weapon openly "as a prop in a motion picture, television, video, theatrical, or
10 other entertainment production or event" would need to do so under the auspices of an
11 Entertainment Firearms Permit. For entertainment productions this generally has meant that a
12 propmaster or similarly qualified person is supervising the use of firearms in the production, and
13 others involved in the production may transfer or possess firearms under the auspices of the
14 supervising permit-holder.

15 The Attorney General understands this exception to have been carried forward into the open
16 carry laws, as the legislative history of Penal Code § 26375 refers to the use of unloaded
17 handguns as an "entertainment props." (See DOJ 000219.) Thus, the exceptions set forth in
18 Penal Code §§ 26375 and 26405, subdivision (r) are available only to those using unloaded
19 firearms loaned to them for use as "entertainment props" in a motion picture, television, video,
20 theatrical, or other entertainment production or event, and when operating under the auspices of a
21 Firearms Entertainment Permit.

22 **INTERROGATORY NO. 24:** State all facts supporting your contention that the definition of
23 "authorized participant" under Penal Code §§ 26375 and 26405(r) refers to a person with an
24 "entertainment firearms permit" issued pursuant to Penal Code § 29500.

25 **INITIAL RESPONSE TO INTERROGATORY NO. 24:**

26 Defendant Becerra incorporates by reference the above-stated general objections as though
27 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it poses
28 a question of pure law. Defendant Becerra is not required to respond to interrogatories raising

1 questions of pure law. See *AngioScore, Inc. v. TriReme Med., Inc.*, No. 12-cv-03393-YGR (JSC),
2 2014 WL 7188779, at *5 (N.D. Cal. Dec. 16, 2014) (“[I]nterrogatories directed to issues of ‘pure
3 law’—i.e., abstract legal issues not dependent on the facts of the case are not permitted”) (citation
4 and some internal punctuation omitted).

5 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
6 follows: Defendant Becerra has not made this contention. What the Legislature intended when it
7 used the phrase “authorized participant” is a question of statutory interpretation.

8 **AMENDED RESPONSE TO INTERROGATORY 24:**

9 Becerra has not made this contention. However, to the extent that he had, in response to
10 interrogatory 23, Becerra has explained his understanding of the statute in the context of this
11 particular case.

12 **SECOND AMENDED RESPONSE TO INTERROGATORY NO. 24:**

13 To the extent that Defendant Becerra has made the contention “that the definition of
14 ‘authorized participant’ under Penal Code §§ 26375 and 26405(r) refers to a person with an
15 ‘entertainment firearms permit’ issued pursuant to Penal Code § 29500, in response to
16 interrogatory 23, Becerra has explained his understanding of the statute in the context of this
17 particular case.

18 **INTERROGATORY NO. 25:** Identify all documents bearing upon, supporting, or
19 reflecting the facts set forth in Your response to the preceding interrogatory.

20 **RESPONSE TO INTERROGATORY NO. 25:**

21 Defendant Becerra incorporates by reference the above-stated general objections as though
22 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
23 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
24 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information
25 that is relevant to Plaintiff’s claims.

26 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
27 follows: N/A.

28 **AMENDED RESPONSE TO INTERROGATORY 25:**

1 Becerra has not made this contention. However, to the extent that he had, in response to
2 interrogatory 23, Becerra has explained his understanding of the statute in the context of this
3 particular case.

4 **SECOND AMENDED RESPONSE TO INTERROGATORY NO. 25:**

5 To the extent that Defendant Becerra has made the contention “that the definition of
6 ‘authorized participant’ under Penal Code §§ 26375 and 26405(r) refers to a person with an
7 ‘entertainment firearms permit’ issued pursuant to Penal Code § 29500, in response to
8 interrogatory 23, Becerra has explained his understanding of the statute in the context of this
9 particular case.

11 Dated: October 23, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
ANTHONY R. HAKL
Supervising Deputy Attorney General

/s/ John W. Killeen
NOREEN P. SKELLY
Deputy Attorney General
JOHN W. KILLEEN
Deputy Attorney General
Attorneys for Defendant Attorney General
Xavier Becerra

25 SA2018100198
26 34524444.docx

Exhibit EE

XAVIER BECERRA
Attorney General of California
ANTHONY R. HAKL
Supervising Deputy Attorney General
NOREEN P. SKELLY
Deputy Attorney General
State Bar No. 186135
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6057
Fax: (916) 324-8835
E-mail: Noreen.Skelly@doj.ca.gov
*Attorneys for Defendant Attorney General Xavier
Becerra*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MICHAEL ZELNY, an individual,

Plaintiff,

v.

**GAVIN NEWSOM, an individual, in his
official capacity; XAVIER BECERRA, an
individual, in his official capacity; CITY OF
MENLO PARK, a municipal corporation;
and DAVE BERTINI, in his official
capacity,**

Defendants.

3:17-cv-07357 RS (NC)

**DEFENDANT ATTORNEY GENERAL
XAVIER BECERRA'S SECOND
AMENDED RESPONSES TO
PLAINTIFF MICHAEL ZELNY'S
FIRST SET OF INTERROGATORIES**

PROPOUNDING PARTY: Plaintiff Michael Zeleny

ANSWERING PARTY: Defendant Attorney General Xavier Becerra

SET NUMBER: One

///

///

///

1 investigation, legal research and analysis may supply additional facts and may lead to additions,
2 changes, and variations from the answers herein.

3 The following answers are given without prejudice to the right to produce evidence and/or
4 witnesses or rely on facts which Defendant Becerra may later discover. Defendant Becerra
5 accordingly reserves the right to change any and all answers herein as additional facts are
6 ascertained, witnesses identified and legal research is completed. The answers contained herein
7 are made in good faith in an attempt to supply as much factual information and as much
8 specification of legal contention as is presently known, and in no way prejudices Defendant
9 Becerra in relation to further discovery and proceedings.

10 Defendant Becerra incorporates by reference every general objection set forth above into
11 each specific answer set forth below. A specific response may repeat a general objection for
12 emphasis or some other reason. The failure to include a general objection in any specific answer
13 does not waive any general objection to that interrogatory.

14 **INTERROGATORY NO. 1:** State all facts on which You base Your contention, if any,
15 that California Penal Code § 26350 is constitutional under the Second Amendment, including any
16 legitimate goals or public interests intended to be served by that statute.

17 [As used in these interrogatories,

18 (a) “You” and “Your” refer to Xavier Becerra as the Attorney General of the State of
19 California. These interrogatories seek the official position of the State of California;

20 (b) “Second Amendment” means the Second Amendment to the United States
21 Constitution].

22 **RESPONSE TO INTERROGATORY NO. 1:**

23 Defendant Becerra incorporates by reference the above-stated general objections as though
24 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
25 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
26 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information
27 that is relevant to Plaintiff’s claims. Defendant Becerra also objects to this interrogatory on the
28 grounds that it seeks Defendant Becerra’s contentions regarding the constitutionality of California

1 Penal Code § 26350, and thus poses a question of pure law. Defendant Becerra is not required to
2 respond to interrogatories raising questions of pure law. See *AngioScore, Inc. v. TriReme Med.,*
3 *Inc.*, No. 12-cv-03393-YGR (JSC), 2014 WL 7188779, at *5 (N.D. Cal. Dec. 16, 2014)
4 (“[I]nterrogatories directed to issues of ‘pure law’—i.e., abstract legal issues not dependent on the
5 facts of the case are not permitted”) (citation and some internal punctuation omitted). A party
6 responding to interrogatories “is not required to write his[, her, or its] brief on a motion for
7 summary judgment in his[, her, or its] responses to interrogatories.” *Larson v. Trans Union, LLC*,
8 No. 3:12-CV-05726-WHO, 2017 WL 1540710, at *1 (N.D. Cal. April 28, 2017) (citation and
9 some internal punctuation omitted).

10 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
11 follows: California Penal Code § 26350 is constitutional under the Second Amendment.

12 In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court
13 recognized that the Second Amendment protects an individual right to keep and bear arms. 554
14 U.S. at 636. The *Heller* Court did not, however, “undertake an exhaustive historical analysis . . .
15 of the full scope of the Second Amendment” or attempt to “clarify the entire field.” *Id.* at 626,
16 635.

17 First, *Heller* explains that “the most natural reading of ‘keep Arms’” is “to ‘have
18 weapons,’” 554 U.S. at 582, and that “bear arms” is most naturally read to mean “‘wear, bear, or
19 carry upon the person or in clothing or in a pocket, for the purpose of being armed and ready for
20 offensive or defensive action in a case of conflict with another person,’” *id.* at 584 (ellipses
21 omitted).

22 Second, the right to bear arms must be construed and applied with careful attention to its
23 “historical background.” *Heller*, 554 U.S. at 592; see *id.* At 576-626. This is critical “because it
24 has always been widely understood that the Second Amendment, like the First and Fourth
25 Amendments, codified a *pre-existing* right,” and “declares only that is ‘shall not be infringed.’”
26 *Id.*, at 592. Thus, while the Second Amendment’s inclusion in the Bill of Rights indicates that the
27 right to bear arms ranks as fundamental, nothing about its enumeration in the Constitution
28

1 changed the right into anything more comprehensive or absolute than would have been
2 understood and expected by “ordinary citizens in the founding generation.” *Id.* at 577.

3 Third, that commonly understood right was and is “not unlimited.” *Heller*, 554 U.S. at 595,
4 626. It is not a right “to keep and carry any weapon whatsoever in any manner whatsoever and
5 for whatever purpose,” *id.* at 626, or “to carry arms for any sort of confrontation,” *id.* at 595. The
6 core individual right recognized by *Heller* is the right to keep and bear arms “in defense of hearth
7 and home.” 554 U.S. at 635; see also *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)
8 (plurality op.) (*Heller*’s “central holding” was that “the Second Amendment protects a personal
9 right to keep and bear arms for lawful purposes, most notably for self-defense within the home.”).
10 That does not mean that the right to “bear” has no scope or application beyond the home or its
11 immediate environs. But nothing in *Heller* suggests that it applies in exactly the same in all
12 places, so that a restriction on bearing arms in public must be treated just like a restriction on
13 bearing in or around the home. In particular, nothing in *Heller* dictates that, as Plaintiff Zeleny
14 seems to contend, that the Second Amendment embodies an individual right to openly carry a gun
15 in almost any public place.

16 On the contrary, *Heller* makes clear that Second Amendment rights are subject to many
17 reasonable regulations. See 554 U.S. at 636. Indeed, the Second Amendment “by no means
18 eliminates” States’ “ability to devise solutions to social problems that suit local needs and
19 values.” *McDonald*, 561 U.S. at 785.

20 *Heller* does not recognize any unfettered right to carry firearms in the crowded urban areas,
21 based solely on an individual’s stated desire to be ““armed and ready for offensive or defensive
22 action in case of conflict with another person,”” 554 U.S. at 584. Rather, under *Heller*, Plaintiff
23 Zeleny’s challenge to Penal Code § 26350 must be evaluated, in the first instance, by examining
24 “the historical understanding of the scope of that right.” *Id.* at 625. The challenge cannot succeed
25 if the State’s restrictions are a type of reasonable public regulation that has long been considered
26 consistent with a private right to bear arms. *Cf. id.* at 626-627.

27 “No fundamental right—not even the First Amendment—is absolute.” *McDonald*, 561
28 U.S. at 802 (Scalia, J., concurring). Just as the First Amendment does not confer a right to speak

1 in any time, place or manner, history and precedent teach that the Second Amendment does not
2 confer the right to carry guns anywhere or at any time. See *Heller*, 554 U.S. at 595. California’s
3 laws regulating the public carrying of firearms strike a permissible balance between preserving
4 order and public safety and accommodating the desire of some residents to carry guns. There are
5 consistent with traditional restrictions on public carry, and are presumptively lawful on that basis.

6 Where text, history, and tradition show that a challenged law is consistent with the Second
7 Amendment, the restriction “‘passes constitutional muster’” and the court’s inquiry “‘is
8 complete.’” *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 682 (9th Cir. 2017) (en banc); see *Heller*,
9 554 U.S. at 626, 627 n.26.

10 California broadly allows the carrying of firearms in places and circumstances where it has
11 traditionally been common: in or immediately around an individual’s home or place of business
12 and on much other private property with permission; in less-populated areas and during activities
13 such as hunting; and in circumstances of immediate and grave danger to person or property when
14 law enforcement is not available. It also allows qualified individuals to obtain licenses to carry
15 more generally, if they can establish “good cause” under standards set by local officials who are
16 most familiar with the needs and desires of their own communities.

17 However, there is an “historical prevalence” of public carry restrictions similar to Penal
18 Code § 26350. *Kachalsky v. Cty of Westchester*, 701 F.3d 81, 96 (2nd Cir. 2012). Because
19 “[f]irearms have always been more heavily regulated in the public sphere,” the right to bear arms
20 “most certainly operates in a different manner” in that context than when evaluating restrictions
21 that impinge directly on the core right to keep and carry guns in the home. *Drake v. Filko*, 724
22 F.3d 426, 430 n.5. (3rd Cir. 2013).

23 This makes good functional sense. When individuals move outside their homes—and
24 particularly when they move about in populated areas—their interest in carrying a firearm is
25 much more likely to come into conflict with the public interest in order and safety. See, e.g.,
26 *Gould v. Morgan*, 907 F.3d 659, 672, (1st Cir. 2018). The “inherent” risk that firearms present
27 when carried in public “distinguishes the Second Amendment right from other fundamental rights
28 . . . such as the right to marry and the right to be free from viewpoint discrimination, which can be

1 exercised without creating a direct risk to others. *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121,
2 1126 (10th Cir. 2015). And as the Fourth Circuit observed, it “is not far-fetched to think” that
3 Heller’s focus on the “core” right to protect the home was born out of a recognition that the
4 danger of “tragic act[s]” of violence “would rise exponentially as one moved the right from the
5 home to the public square.” *United States v. Masciandaro*, 638 F.3d 458, 475-476 (4th Cir. 2011)
6 (Wilkinson, J.).

7 There is a legitimate role for public regulation touching on even our most fundamental
8 rights—especially when there is or can be genuine tension between the exercise of individual
9 rights and the safety of members of the public and law enforcement officers.

10 When, as here, a court will review a challenged statute under intermediate scrutiny, courts
11 ask whether the law promotes a “significant, substantial, or important government objective,” and
12 whether there is a “‘reasonable fit’ between the challenged law and the asserted objective.” *Peña*
13 *v. Lindley*, 898 F.3d 969, 979 (9th Cir. 2018). While the State must show that the law “promotes
14 a substantial government interest that would be achieved less effectively absent the regulation,” it
15 need not demonstrate that the regulation is the “least restrictive means of achieving the
16 government interest.” *Id.* (citations and quotation marks omitted). A court’s only obligation is to
17 “assure that, in formulating its judgments, [the State] has drawn reasonable inferences based on
18 substantial evidence,” an inquiry that must accord “‘substantial deference to the predictive
19 judgments’” of the legislature. *Id.* at 979-980 (quoting *Turner Broad. Sys., Inc. v. FCC*, 520 U.S.
20 180, 195 (1997)).

21 The need for appropriate deference to legislative predications is especially clear in the
22 Second Amendment context. “Providing for the safety of citizens within their borders has long
23 been state government’s most basic task.” *Kolbe v. Hogan*, 849 F.3d 114, 150 (4th Cir. 2017)
24 (Wilkinson, J., concurring). State legislatures are “‘far better equipped than the judiciary’ to
25 make sensitive public policy judgments (within constitutional limits) concerning the dangers in
26 carrying firearms and the manner to combat those risks.” *Kachalsky*, 701 F.3d at 97. And, while
27 a legislature’s judgments can be based on empirical evidence, they need not be; “history,
28 consensus, and ‘simple common sense’” will suffice. *Florida Bar v. Went for It, Inc.*, 515 U.S.

1 618, 628 (1995). Indeed, when it comes to dealing with a complex societal problem like gun
2 violence, there will almost always be room for reasonable minds to differ about the optimal
3 solution; demanding undue certainty would be foolhardy.

4 Here, California has a compelling interest in protecting public safety and reducing gun
5 violence. *Jackson v. City & County of San Francisco*, 746 F.3d 953, 965 (9th Cir. 2014). An
6 increase in guns carried by private persons in public places increases the risk that ““basic
7 confrontations between individuals [will] turn deadly.”” *Wollard v. Gallagher*, 712 F.3d 865, 879
8 (4th Cir. 2013). Similarly, misfired shots or accidental discharges are “more likely to hit a
9 bystander where there are more bystanders to hit.” Blocher, *Firearm Localism*, 123 Yale L.J. 82,
10 122-123 (2013). The Legislature could also conclude that widespread public carry increases the
11 “availability of handguns to criminals via theft,” *Woollard*, 712 F.3d at 879, and that such guns
12 would then be used to “commit violent crimes” or be transferred to “others who commit crimes,”
13 U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *2012 Summary:*
14 *Firearms Reported Lost and Stolen 2* (2013).

15 According to the legislative history of California Penal Code § 26350, the absence of a
16 prohibition on openly carrying unloaded firearms has created a surge in individuals openly
17 carrying unloaded firearms in public. These incidents adversely affect public safety in several
18 ways. Members of the public who encounter individuals openly carrying firearms are alarmed
19 and fearful for their safety and the safety of others. When members of the public report such
20 incidents to local law enforcement, they are only able to provide law enforcement personnel with
21 incomplete information. As a result, law enforcement agencies respond to such incidents with
22 limited information regarding whether the individual openly carrying the firearm is a danger to
23 himself or herself; a danger to the public; or a danger to the responding law enforcement
24 personnel.

25 In such situations, a wrong move by the individual carrying the firearm could be construed
26 as threatening by the responding law enforcement officer. The officer may feel compelled to
27 respond in a manner that could result in injury or death. Thus, the practice of openly carrying
28 unloaded firearms can create an unsafe environment for everyone involved: the individual

1 carrying the firearm, the responding law enforcement personnel, and all other individuals who
2 may be nearby.

3 In addition, responding to incidents involving individuals openly carrying unloaded
4 firearms taxes the resources of law enforcement agencies already stretched by under-staffing and
5 budget cutbacks. Such a diversion of resources adversely affects law enforcement agencies'
6 ability to provide other public safety services to their communities. See e.g., *Woollard*, 712 F.3d
7 at 879-880 (recounting similar policing benefits).

8 In light of the public safety risks the Legislature could reasonably deem to be associated
9 with public carrying of firearms, there is a “reasonable fit” between California’s calibrated
10 regime governing public carry and the important interests that it serves. *Peña*, 898 F.3d at 979.

11 **INTERROGATORY NO. 2:** Identify all documents bearing upon, supporting, or
12 reflecting the facts set forth in Your response to the preceding interrogatory.

13 **RESPONSE TO INTERROGATORY NO. 2:**

14 Defendant Becerra incorporates by reference the above-stated general objections as though
15 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
16 vague, overbroad, and/or unduly burdensome. Moreover, it seeks information irrelevant to
17 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information
18 that is relevant to Plaintiff’s claims.

19 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
20 follows: See DOJ 000127-DOJ000411; DOJ 000001-DOJ 000126; DOJ 001227-DOJ 001281.

21 **INTERROGATORY NO. 3:** State all facts on which You base Your contention, if any,
22 that California Penal Code § 26400 is constitutional under the Second Amendment, including any
23 legitimate goals or public interests intended to be served by the statute.

24 **RESPONSE TO INTERROGATORY NO. 3:**

25 Defendant Becerra incorporates by reference the above-stated general objections as though
26 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
27 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
28 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information

1 that is relevant to Plaintiff’s claims. Defendant Becerra also objects to this interrogatory on the
2 grounds that it seeks Defendant Becerra’s contentions regarding the constitutionality of California
3 Penal Code § 26400, and thus poses a question of pure law. Defendant Becerra is not required to
4 respond to interrogatories raising questions of pure law. See *AngioScore, Inc. v. TriReme Med.,*
5 *Inc.*, No. 12-cv-03393-YGR (JSC), 2014 WL 7188779, at *5 (N.D. Cal. Dec. 16, 2014)
6 (“[I]nterrogatories directed to issues of ‘pure law’—i.e., abstract legal issues not dependent on the
7 facts of the case are not permitted”) (citation and some internal punctuation omitted). A party
8 responding to interrogatories “is not required to write his[, her, or its] brief on a motion for
9 summary judgment in his[, her, or its] responses to interrogatories.” *Larson v. Trans Union, LLC*,
10 No. 3:12-CV-05726-WHO, 2017 WL 1540710, at *1 (N.D. Cal. April 28, 2017) (citation and
11 some internal punctuation omitted).

12 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
13 follows: California Penal Code § 26400 is constitutional under the Second Amendment.

14 In *Heller*, the Supreme Court recognized that the Second Amendment protects an individual
15 right to keep and bear arms. 554 U.S. at 636. The *Heller* Court did not, however, “undertake an
16 exhaustive historical analysis . . . of the full scope of the Second Amendment” or attempt to
17 “clarify the entire field.” *Id.* at 626, 635.

18 First, *Heller* explains that “the most natural reading of ‘keep Arms’” is “to ‘have
19 weapons,’” 554 U.S. at 582, and that “bear arms” is most naturally read to mean “‘wear, bear, or
20 carry upon the person or in clothing or in a pocket, for the purpose of being armed and ready for
21 offensive or defensive action in a case of conflict with another person,’” *id.* at 584 (ellipses
22 omitted).

23 Second, the right to bear arms must be construed and applied with careful attention to its
24 “historical background.” *Heller*, 554 U.S. at 592; see *id.* At 576-626. This is critical “because it
25 has always been widely understood that the Second Amendment, like the First and Fourth
26 Amendments, codified a *pre-existing* right,” and “declares only that is ‘shall not be infringed.’”
27 *Id.*, at 592. Thus, while the Second Amendment’s inclusion in the Bill of Rights indicates that the
28 right to bear arms ranks as fundamental, nothing about its enumeration in the Constitution

1 changed the right into anything more comprehensive or absolute than would have been
2 understood and expected by “ordinary citizens in the founding generation.” *Id.* at 577.

3 Third, that commonly understood right was and is “not unlimited.” *Heller*, 554 U.S. at 595,
4 626. It is not a right “to keep and carry any weapon whatsoever in any manner whatsoever and
5 for whatever purpose,” *id.* at 626, or “to carry arms for any sort of confrontation,” *id.* at 595. The
6 core individual right recognized by *Heller* is the right to keep and bear arms “in defense of hearth
7 and home.” 554 U.S. at 635; see also *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010)
8 (plurality op.) (*Heller*’s “central holding” was that “the Second Amendment protects a personal
9 right to keep and bear arms for lawful purposes, most notably for self-defense within the home.”).
10 That does not mean that the right to “bear” has no scope or application beyond the home or its
11 immediate environs. But nothing in *Heller* suggests that it applies in exactly the same in all
12 places, so that a restriction on bearing arms in public must be treated just like a restriction on
13 bearing in or around the home. In particular, nothing in *Heller* dictates that, as Plaintiff Zeleny
14 seems to contend, that the Second Amendment embodies an individual right to openly carry a gun
15 in almost any public place.

16 On the contrary, *Heller* makes clear that Second Amendment rights are subject to many
17 reasonable regulations. See 554 U.S. at 636. Indeed, the Second Amendment “by no means
18 eliminates” States’ “ability to devise solutions to social problems that suit local needs and
19 values.” *McDonald*, 561 U.S. at 785.

20 *Heller* does not recognize any unfettered right to carry firearms in the crowded urban areas,
21 based solely on an individual’s stated desire to be ““armed and ready for offensive or defensive
22 action in case of conflict with another person,”” 554 U.S. at 584. Rather, under *Heller*, Plaintiff
23 Zeleny’s challenge to Penal Code § 26350 must be evaluated, in the first instance, by examining
24 “the historical understanding of the scope of that right.” *Id.* at 625. The challenge cannot succeed
25 if the State’s restrictions are a type of reasonable public regulation that has long been considered
26 consistent with a private right to bear arms. *Cf. id.* at 626-627.

27 “No fundamental right—not even the First Amendment—is absolute.” *McDonald*, 561
28 U.S. at 802 (Scalia, J., concurring). Just as the First Amendment does not confer a right to speak

1 in any time, place or manner, history and precedent teach that the Second Amendment does not
2 confer the right to carry guns anywhere or at any time. See *Heller*, 554 U.S. at 595. California’s
3 laws regulating the public carrying of firearms strike a permissible balance between preserving
4 order and public safety and accommodating the desire of some residents to carry guns. There are
5 consistent with traditional restrictions on public carry, and are presumptively lawful on that basis.

6 Where text, history, and tradition show that a challenged law is consistent with the Second
7 Amendment, the restriction “‘passes constitutional muster’” and the court’s inquiry “‘is
8 complete.’” *Teixeira*, 873 F.3d at 682; see *Heller*, 554 U.S. at 626, 627 n.26.

9 California broadly allows the carrying of firearms in places and circumstances where it has
10 traditionally been common: in or immediately around an individual’s home or place of business
11 and on much other private property with permission; in less-populated areas and during activities
12 such as hunting; and in circumstances of immediate and grave danger to person or property when
13 law enforcement is not available. It also allows qualified individuals to obtain licenses to carry
14 more generally, if they can establish “good cause” under standards set by local officials who are
15 most familiar with the needs and desires of their own communities.

16 However, there is an “historical prevalence” of public carry restrictions similar to Penal
17 Code § 26400. *Kachalsky*, 701 F.3d at 96. Because “[f]irearms have always been more heavily
18 regulated in the public sphere,” the right to bear arms “most certainly operates in a different
19 manner” in that context than when evaluating restrictions that impinge directly on the core right
20 to keep and carry guns in the home. *Drake*, 724 F.3d at 430 n.5.

21 This makes good functional sense. When individuals move outside their homes—and
22 particularly when they move about in populated areas—their interest in carrying a firearm is
23 much more likely to come into conflict with the public interest in order and safety. See, e.g.,
24 *Gould v. Morgan*, 907 F.3d 659, 672, (1st Cir. 2018). The “inherent” risk that firearms present
25 when carried in public “distinguishes the Second Amendment right from other fundamental rights
26 . . . such as the right to marry and the right to be free from viewpoint discrimination, which can be
27 exercised without creating a direct risk to others. *Bonidy*, 790 F.3d at 1126. And as the Fourth
28 Circuit observed, it “is not far-fetched to think” that *Heller*’s focus on the “core” right to protect

1 the home was born out of a recognition that the danger of “tragic act[s]” of violence “would rise
2 exponentially as one moved the right from the home to the public square.” *Masciandaro*, 638
3 F.3d at 475-476.

4 There is a legitimate role for public regulation touching on even our most fundamental
5 rights—especially when there is or can be genuine tension between the exercise of individual
6 rights and the safety of members of the public and law enforcement officers.

7 When, as here, a court will review a challenged statute under intermediate scrutiny, courts
8 ask whether the law promotes a “significant, substantial, or important government objective,” and
9 whether there is a “‘reasonable fit’ between the challenged law and the asserted objective.” *Peña*,
10 898 F.3d at 979. While the State must show that the law “promotes a substantial government
11 interest that would be achieved less effectively absent the regulation,” it need not demonstrate
12 that the regulation is the “least restrictive means of achieving the government interest.” *Id.*
13 (citations and quotation marks omitted). A court’s only obligation is to “assure that, in
14 formulating its judgments, [the State] has drawn reasonable inferences based on substantial
15 evidence,” an inquiry that must accord “‘substantial deference to the predictive judgments’” of
16 the legislature. *Id.* at 979-980 (quoting *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195
17 (1997)).

18 The need for appropriate deference to legislative predications is especially clear in the
19 Second Amendment context. “Providing for the safety of citizens within their borders has long
20 been state government’s most basic task.” *Kolbe*, 849 F.3d at 150. State legislatures are “‘far
21 better equipped than the judiciary’ to make sensitive public policy judgments (within
22 constitutional limits) concerning the dangers in carrying firearms and the manner to combat those
23 risks.” *Kachalsky*, 701 F.3d at 97. And, while a legislature’s judgments can be based on
24 empirical evidence, they need not be; “history, consensus, and ‘simple common sense’” will
25 suffice. *Went for It, Inc.*, 515 U.S. at 628. Indeed, when it comes to dealing with a complex
26 societal problem like gun violence, there will almost always be room for reasonable minds to
27 differ about the optimal solution; demanding undue certainly would be foolhardy.

28 / / /

1 California has a compelling interest in protecting public safety and reducing gun violence.
2 *Jackson*, 746 F.3d at 965. An increase in guns carried by private persons in public places
3 increases the risk that ““basic confrontations between individuals [will] turn deadly.” *Wollard*,
4 712 F.3d at 879. Similarly, misfired shots or accidental discharges are “more likely to hit a
5 bystander where there are more bystanders to hit.” Blocher, *Firearm Localism*, 123 Yale L.J. 82,
6 122-123 (2013). The Legislature could also conclude that widespread public carry increases the
7 “availability of handguns to criminals via theft,” *Woollard*, 712 F.3d at 879, and that such guns
8 would then be used to “commit violent crimes” or be transferred to “others who commit crimes,”
9 U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *2012 Summary:*
10 *Firearms Reported Lost and Stolen 2* (2013).

11 The absence of a prohibition on openly carrying unloaded firearms has created a surge in
12 individuals openly carrying unloaded firearms in public. These incidents adversely affect public
13 safety in several ways. Members of the public who encounter individuals openly carrying
14 firearms are alarmed and fearful for their safety and the safety of others. When members of the
15 public report such incidents to local law enforcement, they are only able to provide law
16 enforcement personnel with incomplete information. As a result, law enforcement agencies
17 respond to such incidents with limited information regarding whether the individual openly
18 carrying the firearm is a danger to himself or herself; a danger to the public; or a danger to the
19 responding law enforcement personnel.

20 In such situations, a wrong move by the individual carrying the firearm could be construed
21 as threatening by the responding law enforcement officer. The officer may feel compelled to
22 respond in a manner that could result in injury or death. Thus, the practice of openly carrying
23 unloaded firearms can create an unsafe environment for everyone involved: the individual
24 carrying the firearm, the responding law enforcement personnel, and all other individuals who
25 may be nearby.

26 In addition, responding to incidents involving individuals openly carrying unloaded
27 firearms taxes the resources of law enforcement agencies already stretched by under-staffing and
28 budget cutbacks. Such a diversion of resources adversely affects law enforcement agencies’

1 ability to provide other public safety services to their communities. See e.g., *Woollard*, 712 F.3d
2 at 879-880 (recounting similar policing benefits).

3 According to the legislative history of California Penal Code § 26400, one of the purposes
4 of the bill (A.B. 1527) was to follow up A.B. 144 (Statutes of 2011), which made public open
5 carry of handguns a misdemeanor, by expanding the prohibition to long-guns in incorporated
6 cities. “The absence of a prohibition on ‘open carry’ of long guns has created an increase in
7 problematic instances of these guns carried in public, alarming unsuspecting individuals causing
8 issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases
9 when a person is openly carrying a firearm, law enforcement is called to the scene with few
10 details other than one or more people are present at a location and are armed.” (See DOJ 001050)
11 “In these tense situations, the slightest wrong move by the gun-carrier could be construed as
12 threatening by the responding officer, who may feel compelled to respond in a manner that could
13 be lethal. In this situation the practice of ‘open carry’ creates an unsafe environment for all
14 parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as
15 well.” (See DOJ 001050)

16 “Additionally, the increase in ‘open-carry’ calls placed to law enforcement has taxed
17 departments dealing with under-staffing and cutbacks due to the current fiscal climate in
18 California, preventing them from protecting the public in other ways.” (See DOJ 001051)

19 In light of the public safety risks the Legislature could reasonably deem to be associated
20 with public carrying of firearms, there is a “‘reasonable fit’” between California’s calibrated
21 regime governing public carry and the important interests that it serves. *Peña*, 898 F.3d at 979.

22 **INTERROGATORY NO. 4:** Identify all documents bearing upon, supporting, or
23 reflecting the facts set forth in Your response to the preceding interrogatory.

24 **RESPONSE TO INTERROGATORY NO. 4:**

25 Defendant Becerra incorporates by reference the above-stated general objections as though
26 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
27 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
28

1 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
2 that is relevant to Plaintiff's claims.

3 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
4 follows: See DOJ 000127-DOJ 000411; DOJ 000412-DOJ 000529; DOJ 000927-DOJ 001226;
5 DOJ 001227-DOJ 001281.

6 **INTERROGATORY NO. 5:** State all reasons for the adoption of California Penal Code
7 §§ 26375 and 26405(r), including, but not limited to any legitimate goals or public interests
8 intended to be served by the exemptions contained therein.

9 **RESPONSE TO INTERROGATORY NO. 5:**

10 Defendant Becerra incorporates by reference the above-stated general objections as though
11 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
12 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
13 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
14 that is relevant to Plaintiff's claims. Defendant Becerra also objects to this interrogatory on the
15 grounds that it seeks Defendant Becerra's contentions regarding the constitutionality of California
16 Penal Code §§ 26375 and 26405(r), and thus poses questions of pure law. Defendant Becerra is
17 not required to respond to interrogatories raising questions of pure law. See *AngioScore, Inc. v.*
18 *TriReme Med., Inc.*, No. 12-cv-03393-YGR (JSC), 2014 WL 7188779, at *5 (N.D. Cal. Dec. 16,
19 2014) ("[I]nterrogatories directed to issues of 'pure law'—i.e., abstract legal issues not dependent
20 on the facts of the case are not permitted") (citation and some internal punctuation omitted). A
21 party responding to interrogatories "is not required to write his[, her, or its] brief on a motion for
22 summary judgment in his[, her, or its] responses to interrogatories." *Larson v. Trans Union, LLC*,
23 No. 3:12-CV-05726-WHO, 2017 WL 1540710, at *1 (N.D. Cal. April 28, 2017) (citation and
24 some internal punctuation omitted).

25 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
26 follows: The *Heller* Court recognized that the Second Amendment protects an individual right to
27 keep and bear arms. 554 U.S. at 636. The Court did not, however, "undertake an exhaustive
28

1 historical analysis . . . of the full scope of the Second Amendment” or attempt to “clarify the
2 entire field.” *Id.* at 626, 635.

3 First, *Heller* explains that “the most natural reading of ‘keep Arms’” is “to ‘have
4 weapons,’” 554 U.S. at 582, and that “bear arms” is most naturally read to mean “‘wear, bear, or
5 carry upon the person or in clothing or in a pocket, for the purpose of being armed and ready for
6 offensive or defensive action in a case of conflict with another person,’” *id.* at 584 (ellipses
7 omitted).

8 Second, the right to bear arms must be construed and applied with careful attention to its
9 “historical background.” *Heller*, 554 U.S. at 592; see *id.* At 576-626. This is critical “because it
10 has always been widely understood that the Second Amendment, like the First and Fourth
11 Amendments, codified a *pre-existing* right,” and “declares only that is ‘shall not be infringed.’”
12 *Id.*, at 592. Thus, while the Second Amendment’s inclusion in the Bill of Rights indicates that the
13 right to bear arms ranks as fundamental, nothing about its enumeration in the Constitution
14 changed the right into anything more comprehensive or absolute than would have been
15 understood and expected by “ordinary citizens in the founding generation.” *Id.* at 577.

16 Third, that commonly understood right was and is “not unlimited.” *Heller*, 554 U.S. at 595,
17 626. It is not a right “to keep and carry any weapon whatsoever in any manner whatsoever and
18 for whatever purpose,” *id.* at 626, or “to carry arms for any sort of confrontation,” *id.* at 595. The
19 core individual right recognized by *Heller* is the right to keep and bear arms “in defense of hearth
20 and home.” 554 U.S. at 635; see also *McDonald*, 561 U.S. at 780 (*Heller*’s “central holding” was
21 that “the Second Amendment protects a personal right to keep and bear arms for lawful purposes,
22 most notably for self-defense within the home.”). That does not mean that the right to “bear” has
23 no scope or application beyond the home or its immediate environs. But nothing in *Heller*
24 suggests that it applies in exactly the same in all places, so that a restriction on bearing arms in
25 public must be treated just like a restriction on bearing in or around the home.

26 On the contrary, *Heller* makes clear that Second Amendment rights are subject to many
27 reasonable regulations. See 554 U.S. at 636. Indeed, the Second Amendment “by no means
28

1 eliminates” States’ “ability to devise solutions to social problems that suit local needs and
2 values.” *McDonald*, 561 U.S. at 785.

3 *Heller* does not recognize any unfettered right to carry firearms in the crowded urban areas,
4 based solely on an individual’s stated desire to be ““armed and ready for offensive or defensive
5 action in case of conflict with another person,”” 554 U.S. at 584. Rather, under *Heller*, a
6 challenge to Penal Code § 26350 must be evaluated, in the first instance, by examining “the
7 historical understanding of the scope of that right.” *Id.* at 625. The challenge cannot succeed if
8 the State’s restrictions are a type of reasonable public regulation that has long been considered
9 consistent with a private right to bear arms. *Cf. id.* at 626-627.

10 “No fundamental right—not even the First Amendment—is absolute.” *McDonald*, 561
11 U.S. at 802 (Scalia, J., concurring). Just as the First Amendment does not confer a right to speak
12 in any time, place or manner, history and precedent teach that the Second Amendment does not
13 confer the right to carry guns anywhere or at any time. See *Heller*, 554 U.S. at 595. California’s
14 laws regulating the public carrying of firearms strike a permissible balance between preserving
15 order and public safety and accommodating the desire of some residents to carry guns. There are
16 consistent with traditional restrictions on public carry, and are presumptively lawful on that basis.

17 Where text, history, and tradition show that a challenged law is consistent with the Second
18 Amendment, the restriction ““passes constitutional muster”” and the court’s inquiry ““is
19 complete.”” *Teixeira*, 873 F.3d at 682; see *Heller*, 554 U.S. at 626, 627 n.26.

20 California broadly allows the carrying of firearms in places and circumstances where it has
21 traditionally been common: in or immediately around an individual’s home or place of business
22 and on much other private property with permission; in less-populated areas and during activities
23 such as hunting; and in circumstances of immediate and grave danger to person or property when
24 law enforcement is not available. It also allows qualified individuals to obtain licenses to carry
25 more generally, if they can establish “good cause” under standards set by local officials who are
26 most familiar with the needs and desires of their own communities.

27 However, there is an “historical prevalence” of public carry restrictions similar to those in
28 California. *Kachalsky*, 701 F.3d at 96. Because “[f]irearms have always been more heavily

1 regulated in the public sphere,” the right to bear arms “most certainly operates in a different
2 manner” in that context than when evaluating restrictions that impinge directly on the core right
3 to keep and carry guns in the home. *Drake*, 724 F.3d at 430 n.5.

4 This makes good functional sense. When individuals move outside their homes—and
5 particularly when they move about in populated areas —their interest in carrying a firearm is
6 much more likely to come into conflict with the public interest in order and safety. *See, e.g.,*
7 *Gould*, 907 F.3d at 672. The “inherent” risk that firearms present when carried in public
8 “distinguishes the Second Amendment right from other fundamental rights . . . such as the right to
9 marry and the right to be free from viewpoint discrimination, which can be exercised without
10 creating a direct risk to others. *Bonidy*, 790 F.3d at 1126. And as the Fourth Circuit observed, it
11 “is not far-fetched to think” that *Heller*’s focus on the “core” right to protect the home was born
12 out of a recognition that the danger of “tragic act[s]” of violence “would rise exponentially as one
13 moved the right from the home to the public square.” *Masciandaro*, 638 F.3d at 475-476.

14 There is a legitimate role for public regulation touching on even our most fundamental
15 rights—especially when there is or can be genuine tension between the exercise of individual
16 rights and the safety of members of the public and law enforcement officers.

17 When, as here, a court will review a challenged statute under intermediate scrutiny, courts
18 ask whether the law promotes a “significant, substantial, or important government objective,” and
19 whether there is a “‘reasonable fit’ between the challenged law and the asserted objective.” *Peña*,
20 898 F.3d at 979. While the State must show that the law “promotes a substantial government
21 interest that would be achieved less effectively absent the regulation,” it need not demonstrate
22 that the regulation is the “least restrictive means of achieving the government interest.” *Id.*
23 (citations and quotation marks omitted). A court’s only obligation is to “assure that, in
24 formulating its judgments, [the State] has drawn reasonable inferences based on substantial
25 evidence,” an inquiry that must accord “‘substantial deference to the predictive judgments’” of
26 the legislature. *Id.* at 979-980 (quoting *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 195
27 (1997)).
28

1 The need for appropriate deference to legislative predication is especially clear in the
2 Second Amendment context. “Providing for the safety of citizens within their borders has long
3 been state government’s most basic task.” *Kolbe*, 849 F.3d at 150. State legislatures are “‘far
4 better equipped than the judiciary’ to make sensitive public policy judgments (within
5 constitutional limits) concerning the dangers in carrying firearms and the manner to combat those
6 risks.” *Kachalsky*, 701 F.3d at 97. And, while a legislature’s judgments can be based on
7 empirical evidence, they need not be; “history, consensus, and ‘simple common sense’” will
8 suffice. *Went for It, Inc.*, 515 U.S. at 628.

9 California has a compelling interest in protecting public safety and reducing gun violence.
10 *Jackson*, 746 F.3d at 965. An increase in guns carried by private persons in public places
11 increases the risk that “‘basic confrontations between individuals [will] turn deadly.’” *Wollard*,
12 712 F.3d at 879. Similarly, misfired shots or accidental discharges are “more likely to hit a
13 bystander where there are more bystanders to hit.” Blocher, *Firearm Localism*, 123 Yale L.J. 82,
14 122-123 (2013). The Legislature could also conclude that widespread public carry increases the
15 “availability of handguns to criminals via theft,” *Woollard*, 712 F.3d at 879, and that such guns
16 would then be used to “commit violent crimes” or be transferred to “others who commit crimes,”
17 U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *2012 Summary:*
18 *Firearms Reported Lost and Stolen 2* (2013).

19 The absence of a prohibition on openly carrying unloaded firearms has created a surge in
20 individuals openly carrying unloaded firearms in public. These incidents adversely affect public
21 safety in several ways. Members of the public who encounter individuals openly carrying
22 firearms are alarmed and fearful for their safety and the safety of others. When members of the
23 public report such incidents to local law enforcement, they are only able to provide law
24 enforcement personnel with incomplete information. As a result, law enforcement agencies
25 respond to such incidents with limited information regarding whether the individual openly
26 carrying the firearm is a danger to himself or herself; a danger to the public; or a danger to the
27 responding law enforcement personnel.

1 In such situations, a wrong move by the individual carrying the firearm could be construed
2 as threatening by the responding law enforcement officer. The officer may feel compelled to
3 respond in a manner that could result in injury or death. Thus, the practice of openly carrying
4 unloaded firearms can create an unsafe environment for everyone involved: the individual
5 carrying the firearm, the responding law enforcement personnel, and all other individuals who
6 may be nearby.

7 In addition, responding to incidents involving individuals openly carrying unloaded
8 firearms taxes the resources of law enforcement agencies already stretched by under-staffing and
9 budget cutbacks. Such a diversion of resources adversely affects law enforcement agencies'
10 ability to provide other public safety services to their communities. *See e.g., Woollard*, 712 F.3d
11 at 879-880 (recounting similar policing benefits).

12 According to the legislative history of California Penal Code § 26400, one of the purposes
13 of the bill (A.B. 1527) was to follow up A.B. 144 (Statutes of 2011), which made public open
14 carry of handguns a misdemeanor, by expanding the prohibition to long-guns in incorporated
15 cities. "The absence of a prohibition on 'open carry' of long guns has created an increase in
16 problematic instances of these guns carried in public, alarming unsuspecting individuals causing
17 issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases
18 when a person is openly carrying a firearm, law enforcement is called to the scene with few
19 details other than one or more people are present at a location and are armed." (See DOJ 001050)
20 "In these tense situations, the slightest wrong move by the gun-carrier could be construed as
21 threatening by the responding officer, who may feel compelled to respond in a manner that could
22 be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all
23 parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as
24 well." (See DOJ 001050)

25 "Additionally, the increase in 'open-carry' calls placed to law enforcement has taxed
26 departments dealing with under-staffing and cutbacks due to the current fiscal climate in
27 California, preventing them from protecting the public in other ways." (See DOJ 001051)
28

1 Here, the Legislature enacted certain exceptions to the general prohibitions on openly
2 carrying firearms.

3 Penal Code § 26375 provides that section 26350 does not apply to, or affect, the open
4 carrying of an unloaded handgun by an authorized participant in, or an authorized employee or
5 agent of a supplier of firearms for, a motion picture, television or video production, or
6 entertainment event, when the participant lawfully uses the handgun as part of that production or
7 event, as part of rehearsing or practicing for participation in that production or event, or while the
8 participant or authorized employee or agent is at that production or event, or rehearsal or practice
9 for that production or event. (Pen. Code, § 26375.) According to the Legislative history, Penal
10 Code § 26375 permits the use of unloaded handguns as an “entertainment props.” (See DOJ
11 000219)

12 Likewise, Penal Code § 26405, subdivision (r) provides that Penal Code § 26400 does not
13 apply to, or affect, the carrying of an unloaded firearm that is not a handgun by an authorized
14 participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture,
15 television, or video production or entertainment event, when the participant lawfully uses that
16 firearm as part of that production or event, as part of rehearsing or practicing for participation in
17 that production or event, or while the participant or authorized employee or agent is at that
18 production or event, or rehearsal or practice for that production or event.

19 And, Penal Code § 29500 provides that, “Any person who is at least 21 years of age may
20 apply for an entertainment firearms permit from the Department of Justice. An entertainment
21 firearms permit authorizes the permit holder to possess firearms loaned to the permitholder for
22 use solely as a prop in a motion picture, television, video, theatrical, or other entertainment
23 production or event.” (Added by Stats.2010, c. 711 (S.B. 1080).)

24 **INTERROGATORY NO. 6:** Identify all documents bearing upon, supporting, or
25 reflecting the reasons set forth in Your response to the preceding interrogatory.

26 **RESPONSE TO INTERROGATORY NO. 6:**

27 Defendant Becerra incorporates by reference the above-stated general objections as though
28 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is

1 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
2 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
3 that is relevant to Plaintiff's claims.

4 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
5 follows: See DOJ 000127-DOJ 000411; DOJ 000749-DOJ 000926; DOJ 0001282-DOJ 001312.

6 **INTERROGATORY NO. 7:** State all factors that You contend were considered by the
7 Legislature of the State of California in determining whether or not to exempt the use of firearms
8 in other forms of expressive activity from the statutes prohibiting the carrying of firearms in
9 public.

10 **RESPONSE TO INTERROGATORY NO. 7:**

11 Defendant Becerra incorporates by reference the above-stated general objections as though
12 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
13 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
14 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
15 that is relevant to Plaintiff's claims.

16 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
17 follows: Defendant Becerra has not made the contention described in this interrogatory.

18 **INTERROGATORY NO. 8:** State all reasons for distinguishing between "motion picture,
19 television or video production, or entertainment event[s]" and other forms of speech or
20 expressive conduct in California Penal Code §§ 26375 and 26405(r).

21 **RESPONSE TO INTERROGATORY NO. 8:**

22 Defendant Becerra incorporates by reference the above-stated general objections as though
23 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
24 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
25 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
26 that is relevant to Plaintiff's claims.

27 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
28 follows: The interrogatory call for Defendant Becerra to speculate regarding whether the

1 Legislature considered including other forms of “speech or expressive conduct” in enacting Penal
2 Code §§ 26375 and 26405, subdivision (r). Thus, Defendant Becerra is unable to respond to this
3 interrogatory.

4 **INTERROGATORY NO. 9:** Identify all documents bearing upon, supporting, or
5 reflecting the reasons set forth in Your response to the preceding interrogatory.

6 **RESPONSE TO INTERROGATORY NO. 9:**

7 Defendant Becerra incorporates by reference the above-stated general objections as though
8 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
9 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
10 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information
11 that is relevant to Plaintiff’s claims.

12 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
13 follows: N/A.

14 **INTERROGATORY NO. 10:** Does the phrase “authorized participant” as used in
15 California Penal Code §§ 26375 and 26405(r) refer to a participant authorized by a governmental
16 body or agency?

17 **INITIAL RESPONSE TO INTERROGATORY NO. 10:**

18 Defendant Becerra incorporates by reference the above-stated general objections as though
19 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
20 vague and overbroad. Moreover, it seeks information irrelevant to Plaintiff Zeleny’s claims, and
21 not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff’s
22 claims.

23 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
24 follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
25 “authorized participant.”

26 However, according to the Legislative history of Penal Code § 26375, that section permits
27 the use of unloaded handguns as an “entertainment props.” (See DOJ 000219) Additionally, the
28 Entertainment Firearms Permit only authorizes the permit holder “to possess firearms loaned to

1 the permitholder for use solely as a prop in a motion picture, television, video, theatrical, or other
2 entertainment production or event.” (Penal Code § 29500.) Thus, the exceptions set forth in
3 Penal Code §§ 26375 and 26405, subdivision (r) are available only to those using unloaded
4 firearms loaned to them for use as “entertainment props” in a motion picture, television, video,
5 theatrical, or other entertainment production or event.

6 **AMENDED RESPONSE TO INTERROGATORY NO. 10:**

7 Defendant Becerra incorporates by reference the above-stated general objections as though
8 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
9 vague and overbroad. Moreover, it seeks information irrelevant to Plaintiff Zeleny’s claims, and
10 not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff’s
11 claims.

12 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
13 follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
14 “authorized participant.” Defendant Becerra has never issued a formal opinion under California
15 law regarding the meaning of the phrase “authorized participant,” and this response is not such an
16 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable
17 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
18 Defendant Becerra played no material role in the events described in the complaint, and was not
19 involved in the denial of Plaintiff Michael Zeleny’s permit application(s).

20 Based on Defendant Becerra’s understanding of Plaintiff Zeleny’s situation, in the specific
21 context of this case, Defendant Becerra believes that most plausible reading of the term
22 “authorized participant” as used in California Penal Code §§ 26375 and 26405(r) refers to a
23 participant authorized by a governmental body or agency.

24 **INTERROGATORY NO. 11:** If Your answer to Interrogatory No. 10 is in the
25 affirmative, identify the governmental bodies or agencies from which authorization is required?

26 **INITIAL RESPONSE TO INTERROGATORY NO. 11:**

27 Defendant Becerra incorporates by reference the above-stated general objections as though
28 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is

1 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
2 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
3 that is relevant to Plaintiff's claims.

4 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
5 follows: N/A.

6 **AMENDED RESPONSE TO INTERROGATORY NO. 11:**

7 Defendant Becerra incorporates by reference the above-stated general objections as though
8 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
9 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
10 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
11 that is relevant to Plaintiff's claims.

12 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
13 follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
14 "authorized participant." Defendant Becerra has never issued a formal opinion under California
15 law regarding the meaning of the phrase "authorized participant," and this response is not such an
16 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable
17 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
18 Defendant Becerra played no material role in the events described in the complaint, and was not
19 involved in the denial of Plaintiff Michael Zeleny's permit application(s).

20 Based on Defendant Becerra's understanding of Plaintiff Zeleny's situation, in the specific
21 context of this case, the Department of Justice's Entertainment Firearms Permit only authorizes
22 the permit holder "to possess firearms loaned to the permitholder for use solely as a prop in a
23 motion picture, television, video, theatrical, or other entertainment production or event." (Penal
24 Code § 29500.) Anyone who is not otherwise authorized to carry a weapon openly, but who
25 desires to carry a weapon openly "as a prop in a motion picture, television, video, theatrical, or
26 other entertainment production or event" would need to do so under the auspices of an
27 Entertainment Firearms Permit.

1 The Attorney General understands this exception to have been carried forward into the open
2 carry laws, as the legislative history of Penal Code § 26375 refers to the use of unloaded
3 handguns as an “entertainment props.” (See DOJ 000219.) Thus, the exceptions set forth in
4 Penal Code §§ 26375 and 26405, subdivision (r) are available only to those using unloaded
5 firearms loaned to them for use as “entertainment props” in a motion picture, television, video,
6 theatrical, or other entertainment production or event.

7 While the Department of Justice “authorizes” the use of firearms in this narrow context
8 through the issuance of Firearms Entertainment Permits, such authorization is in the nature of a
9 defense to an open carry prosecution within the very narrow context of an entertainment prop, not
10 a preclusion of any other regulation by other agencies. Other law enforcement agencies would
11 not be precluded from ensuring that an individual carrying a weapon openly had a permit, or
12 ensuring that an identified individual is not violating any other federal, state, or local laws or
13 ordinances. Notably, when issuing the Firearms Entertainment Permit, the Department does not
14 verify the nature of the entertainment event or impose any restrictions on how a weapon might be
15 carried or used, but only looks to see if a person is prohibited from owning firearms. In this
16 sense, the Firearms Entertainment Permit is a floor rather than a ceiling, with possible room for
17 other law enforcement agencies to determine, for example, that the open carry of weapons
18 endangered public safety, or was a nuisance, or that someone’s conduct was not a “production or
19 event” covered by the relevant exception, or that someone was not violating other laws.

20 Also, within the structure of the open carry laws, the exception for an authorized participant
21 appears to be analogous to similar exceptions for gun shows (Pen. Code § 26369) or target ranges
22 (Pen. Code § 26365)—defined spaces in which the weapon being carried is not easily visible or
23 accessible to the public. The Attorney General understands the Firearms Entertainment Permit,
24 and the corresponding exceptions to the open carry laws, to apply to confined, non-public spaces
25 for a limited period of time, i.e., in a movie studio or clearly defined production area. To the
26 extent that an individual like Mr. Zeleny seeks to demonstrate on a public street with an unloaded
27 firearm in an unconfined area and/or for an indefinite period of time, the Attorney General views
28 the open carrying of unloaded weapons on a public street, in an unconfined area fully visible to

1 and accessible by anyone else, and not within what would reasonably be considered a defined,
2 enclosed production area, to potentially be conduct outside the scope of the Firearms
3 Entertainment Permit and the corresponding exception to the open carry laws, and potentially
4 subject to enforcement by the law enforcement agency primarily responsible for enforcing the
5 open carry laws in that area.

6 **SECOND AMENDED RESPONSE TO INTERROGATORY NO. 11:**

7 Defendant Becerra incorporates by reference the above-stated general objections as though
8 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
9 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
10 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
11 that is relevant to Plaintiff's claims.

12 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
13 follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
14 "authorized participant." Defendant Becerra has never issued a formal opinion under California
15 law regarding the meaning of the phrase "authorized participant," and this response is not such an
16 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable
17 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
18 Defendant Becerra played no material role in the events described in the complaint, and was not
19 involved in the denial of Plaintiff Michael Zeleny's permit application(s).

20 Based on Defendant Becerra's understanding of Plaintiff Zeleny's situation, in the specific
21 context of this case, Defendant Becerra believes that an "authorized participant" must be
22 operating under the auspices of a Department of Justice Entertainment Firearms Permit, which
23 authorizes the permit holder "to possess firearms loaned to the permitholder for use solely as a
24 prop in a motion picture, television, video, theatrical, or other entertainment production or event."
25 (Penal Code § 29500.) For entertainment productions this generally has meant that a propmaster
26 or similarly qualified person is supervising the use of firearms in the production, and others
27 involved in the production may transfer or possess firearms under the auspices of the supervising
28 permit-holder.

1 **INTERROGATORY NO. 12:** If Your answer to Interrogatory No. 10 is in the
2 affirmative, state all bases for your contention that the phrase “authorized participant,” as used in
3 California Penal Code §§ 26375 and 26405(r), refers to a participant authorized by a
4 governmental body or agency?

5 **INITIAL RESPONSE TO INTERROGATORY NO. 12:**

6 Defendant Becerra incorporates by reference the above-stated general objections as though
7 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
8 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
9 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information
10 that is relevant to Plaintiff’s claims.

11 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
12 follows: N/A.

13 **AMENDED RESPONSE TO INTERROGATORY NO. 12:**

14 Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
15 “authorized participant.” Defendant Becerra has never issued a formal opinion under California
16 law regarding the meaning of the phrase “authorized participant,” and this response is not such an
17 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable
18 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
19 Defendant Becerra played no material role in the events described in the complaint, and was not
20 involved in the denial of Plaintiff Michael Zeleny’s permit application(s).

21 Based on Defendant Becerra’s understanding of Plaintiff Zeleny’s situation, in the specific
22 context of this case, Defendant Becerra believes that most plausible reading of the term
23 “authorized participant” as used in California Penal Code §§ 26375 and 26405(r) refers to a
24 participant authorized by a governmental body or agency. The opposite reading is less plausible.
25 In the broader context of California law, and especially in the context of the Penal Code, it would
26 be anomalous for an individual to be able to exempt themselves from the reach of a penal statute
27 by “authorizing” an exception for themselves.

1 **SECOND AMENDED RESPONSE TO INTERROGATORY NO. 12:**

2 Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
3 “authorized participant.” Defendant Becerra has never issued a formal opinion under California
4 law regarding the meaning of the phrase “authorized participant,” and this response is not such an
5 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable
6 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
7 Defendant Becerra played no material role in the events described in the complaint, and was not
8 involved in the denial of Plaintiff Michael Zeleny’s permit application(s).

9 Based on Defendant Becerra’s understanding of Plaintiff Zeleny’s situation, in the specific
10 context of this case, Defendant Becerra believes that most plausible reading of the term
11 “authorized participant” as used in California Penal Code §§ 26375 and 26405(r) refers to a
12 participant authorized by a governmental body or agency. This reading is based on Defendant
13 Becerra’s historical understanding of the Department of Justice’s Firearms Entertainment Permit,
14 which authorizes the permit holder “to possess firearms loaned to the permitholder for use solely
15 as a prop in a motion picture, television, video, theatrical, or other entertainment production or
16 event.” (Penal Code § 29500.) The Attorney General understands this exception to have been
17 carried forward into the open carry laws, as the legislative history of Penal Code § 26375 refers to
18 the use of unloaded handguns as an “entertainment props.” (See DOJ 000219.) Thus, the
19 exceptions set forth in Penal Code §§ 26375 and 26405, subdivision (r) are available only to those
20 using unloaded firearms loaned to them for use as “entertainment props” in a motion picture,
21 television, video, theatrical, or other entertainment production or event, and when operating under
22 the auspices of a Firearms Entertainment Permit.

23 The opposite reading is less plausible. In the broader context of California law, and
24 especially in the context of the Penal Code, it would be anomalous for an individual to be able to
25 exempt themselves from the reach of a penal statute by “authorizing” an exception for
26 themselves.

27 **INTERROGATORY NO. 13:** If your answer to Interrogatory No. 10 is in the negative,
28 state the persons or entities whose authorization is required in order for California Penal Code §§

1 26375 and 26405(r) to exempt the carrying of firearms from California Penal Code §§ 26350 and
2 26405.

3 **INITIAL RESPONSE TO INTERROGATORY NO. 13:**

4 Defendant Becerra incorporates by reference the above-stated general objections as though
5 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
6 vague and overbroad. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and
7 not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's
8 claims.

9 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
10 follows: The Legislature enacted certain exceptions to the general prohibitions on openly carrying
11 firearms.

12 Penal Code § 26375 provides that section 26350 does not apply to, or affect, the open
13 carrying of an unloaded handgun by an authorized participant in, or an authorized employee or
14 agent of a supplier of firearms for, a motion picture, television or video production, or
15 entertainment event, when the participant lawfully uses the handgun as part of that production or
16 event, as part of rehearsing or practicing for participation in that production or event, or while the
17 participant or authorized employee or agent is at that production or event, or rehearsal or practice
18 for that production or event. (Pen. Code, § 26375.) According to the Legislative history, Penal
19 Code § 26375 permits the use of unloaded handguns as an "entertainment props." (See DOJ
20 000219)

21 Likewise, Penal Code § 26405, subdivision (r) provides that Penal Code § 26400 does not
22 apply to, or affect, the carrying of an unloaded firearm that is not a handgun by an authorized
23 participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture,
24 television, or video production or entertainment event, when the participant lawfully uses that
25 firearm as part of that production or event, as part of rehearsing or practicing for participation in
26 that production or event, or while the participant or authorized employee or agent is at that
27 production or event, or rehearsal or practice for that production or event.
28

1 And, Penal Code § 29500 provides that, “Any person who is at least 21 years of age may
2 apply for an entertainment firearms permit from the Department of Justice. An entertainment
3 firearms permit authorizes the permit holder to possess firearms loaned to the permitholder for
4 use solely as a prop in a motion picture, television, video, theatrical, or other entertainment
5 production or event.” (Added by Stats.2010, c. 711 (S.B. 1080).)

6 **AMENDED RESPONSE TO INTERROGATORY NO. 13:**

7 No amendment is needed because Defendant Becerra’s answer to interrogatory 10 was not
8 in the negative.

9 **INTERROGATORY NO. 14:** Do California Penal Codes §§ 26375 and 26405(r) require
10 that the “motion picture, television or video production” or “entertainment event” itself be
11 authorized in order to exempt participants from California Penal Code §§ 26350 and 26405?

12 **INITIAL RESPONSE TO INTERROGATORY NO. 14:**

13 Defendant Becerra incorporates by reference the above-stated general objections as though
14 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
15 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
16 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information
17 that is relevant to Plaintiff’s claims.

18 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
19 follows: Penal Code §§ 26375 and 26405(r) do not address whether the “motion picture,
20 television or video production” or “entertainment event” itself be authorized in order to exempt
21 participants from California Penal Code §§ 26350 and 26405. Accordingly, Defendant Becerra is
22 unable to respond to this interrogatory.

23 **AMENDED RESPONSE TO INTERROGATORY NO. 14:**

24 Defendant Becerra incorporates by reference the above-stated general objections as though
25 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
26 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
27 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information
28 that is relevant to Plaintiff’s claims.

1 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
2 follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase
3 “authorized participant.” Defendant Becerra has never issued a formal opinion under California
4 law regarding the meaning of the phrase “authorized participant,” and this response is not such an
5 opinion and cannot be relied upon as such an opinion. Nor is this response a generally applicable
6 rule or regulation that is intended to be applied outside of the context of this case. Moreover,
7 Defendant Becerra played no material role in the events described in the complaint, and was not
8 involved in the denial of Plaintiff Michael Zeleny’s permit application(s).

9 Based on Defendant Becerra’s understanding of Plaintiff Zeleny’s situation, in the specific
10 context of this case, Penal Code §§ 26375 and 26405(r) do not address whether the “motion
11 picture, television or video production” or “entertainment event” itself be “authorized” in order to
12 exempt participants from California Penal Code §§ 26350 and 26405. The term “authorized”
13 only clearly modifies the terms “participant,” “employee” or “agent.” And since Mr. Zeleny
14 himself appears to be the “participant” possessing the weapon(s), it appears to be irrelevant if his
15 “production” or “event” is separately authorized. As Defendant Becerra understands the facts, the
16 question might be different if Mr. Zeleny were not the person openly carrying weapons, but were
17 only the person responsible for a “production” or “event.”

18 Whether or not the “motion picture, television or video production” or “entertainment
19 event” itself must be “authorized” also appears to be a separate question from whether there exists
20 a bona fide “production” or “event” to begin with. Again specifically in the context of this case,
21 within the structure of the open carry laws, the relevant exception appears to be analogous to
22 similar exceptions for gun shows (Pen. Code § 26369) or target ranges (Pen. Code § 26365)—
23 defined spaces in which the weapon being carried is not easily visible or accessible to the public.
24 The Attorney General understands the Firearms Entertainment Permit, and the corresponding
25 exceptions to the open carry laws, to apply to confined, non-public spaces for a limited period of
26 time, i.e., in a movie studio or clearly defined production area. To the extent that an individual
27 like Mr. Zeleny seeks to demonstrate on a public street with an unloaded firearm in an unconfined
28 area and/or for an indefinite period of time, the Attorney General views the open carrying of

1 unloaded weapons on a public street, in an unconfined area fully visible to and accessible by
2 anyone else, and not within what would reasonably be considered a defined, enclosed production
3 area (i.e., a production or event), to potentially be conduct outside the scope of the Firearms
4 Entertainment Permit and the corresponding exception to the open carry laws, and potentially
5 subject to enforcement by the law enforcement agency primarily responsible for enforcing the
6 open carry laws in that area.

7 While the Department of Justice “authorizes” the use of firearms in this narrow context
8 through the issuance of Firearms Entertainment Permits, such authorization is in the nature of a
9 defense to an open carry prosecution within the very narrow context of an entertainment prop, not
10 a preclusion of any other regulation by other agencies. Other law enforcement agencies would
11 not be precluded from ensuring that an individual carrying a weapon openly had a permit, or
12 ensuring that an identified individual is not violating any other federal, state, or local laws or
13 ordinances. Notably, when issuing the Firearms Entertainment Permit, the Department does not
14 verify the nature of the entertainment event or impose any restrictions on how a weapon might be
15 carried or used, but only looks to see if a person is prohibited from owning firearms. In this
16 sense, the Firearms Entertainment Permit is a floor rather than a ceiling, with possible room for
17 other law enforcement agencies to determine, for example, that the open carry of weapons
18 endangered public safety, or was a nuisance, or that someone’s conduct was not a “production or
19 event” covered by the relevant exception, or that someone was not violating other laws.

20 **INTERROGATORY NO. 15:** If your response to Interrogatory No. 14 is in the
21 affirmative, identify all persons or entities whose authorization of the “motion picture, television
22 or video production” or “entertainment event” is required in order to exempt participants from
23 California Penal Code §§ 26350 and 26405.

24 **INITIAL RESPONSE TO INTERROGATORY NO. 15:**

25 Defendant Becerra incorporates by reference the above-stated general objections as though
26 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
27 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
28

1 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
2 that is relevant to Plaintiff's claims.

3 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
4 follows: N/A.

5 **AMENDED RESPONSE TO INTERROGATORY NO. 15:**

6 Defendant Becerra's answer to interrogatory 14 was not in the affirmative.

7 **INTERROGATORY NO. 16:** State all of the bases for Your response to Interrogatory
8 No. 14.

9 **INITIAL RESPONSE TO INTERROGATORY NO. 16:**

10 Defendant Becerra incorporates by reference the above-stated general objections as though
11 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
12 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
13 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
14 that is relevant to Plaintiff's claims.

15 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
16 follows: N/A.

17 **AMENDED RESPONSE TO INTERROGATORY NO. 16:**

18 Defendant Becerra has never issued a formal opinion under California law regarding the
19 meaning of the phrase "authorized participant," and this response is not such an opinion and
20 cannot be relied upon as such an opinion. Nor is this response a generally applicable rule or
21 regulation that is intended to be applied outside of the context of this case. Moreover, Defendant
22 Becerra played no material role in the events described in the complaint, and was not involved in
23 the denial of Plaintiff Michael Zeleny's permit application(s).

24 Based on Defendant Becerra's understanding of Plaintiff Zeleny's situation, in the specific
25 context of this case, Penal Code §§ 26375 and 26405(r) do not address whether the "motion
26 picture, television or video production" or "entertainment event" itself be "authorized" in order to
27 exempt participants from California Penal Code §§ 26350 and 26405. The term "authorized"
28 only clearly modifies the terms "participant," "employee" or "agent." And since Mr. Zeleny

1 himself appears to be the “participant” possessing the weapon(s), it appears to be irrelevant if his
2 “production” or “event” is separately authorized. As Defendant Becerra understands the facts, the
3 question might be different if Mr. Zeleny were not the person openly carrying weapons, but were
4 only the person responsible for a “production” or “event.”

5 Whether or not the “motion picture, television or video production” or “entertainment
6 event” itself must be “authorized” also appears to be a separate question from whether there exists
7 a bona fide “production” or “event” to begin with. Again specifically in the context of this case,
8 within the structure of the open carry laws, the relevant exception appears to be analogous to
9 similar exceptions for gun shows (Pen. Code § 26369) or target ranges (Pen. Code § 26365)—
10 defined spaces in which the weapon being carried is not easily visible or accessible to the public.
11 The Attorney General understands the Firearms Entertainment Permit, and the corresponding
12 exceptions to the open carry laws, to apply to confined, non-public spaces for a limited period of
13 time, i.e., in a movie studio or clearly defined production area. To the extent that an individual
14 like Mr. Zeleny seeks to demonstrate on a public street with an unloaded firearm in an unconfined
15 area and/or for an indefinite period of time, the Attorney General views the open carrying of
16 unloaded weapons on a public street, in an unconfined area fully visible to and accessible by
17 anyone else, and not within what would reasonably be considered a defined, enclosed production
18 area (i.e., a production or event), to potentially be conduct outside the scope of the Firearms
19 Entertainment Permit and the corresponding exception to the open carry laws, and potentially
20 subject to enforcement by the law enforcement agency primarily responsible for enforcing the
21 open carry laws in that area.

22 This conclusion is consistent with the legislative history of the open carry statutes. The
23 absence of a prohibition on openly carrying unloaded firearms has created a surge in individuals
24 openly carrying unloaded firearms in public. These incidents adversely affect public safety in
25 several ways. Members of the public who encounter individuals openly carrying firearms are
26 alarmed and fearful for their safety and the safety of others. When members of the public report
27 such incidents to local law enforcement, they are only able to provide law enforcement personnel
28 with incomplete information. As a result, law enforcement agencies respond to such incidents

1 with limited information regarding whether the individual openly carrying the firearm is a danger
2 to himself or herself; a danger to the public; or a danger to the responding law enforcement
3 personnel.

4 In such situations, a wrong move by the individual carrying the firearm could be construed
5 as threatening by the responding law enforcement officer. The officer may feel compelled to
6 respond in a manner that could result in injury or death. Thus, the practice of openly carrying
7 unloaded firearms can create an unsafe environment for everyone involved: the individual
8 carrying the firearm, the responding law enforcement personnel, and all other individuals who
9 may be nearby.

10 In addition, responding to incidents involving individuals openly carrying unloaded
11 firearms taxes the resources of law enforcement agencies already stretched by under-staffing and
12 budget cutbacks. Such a diversion of resources adversely affects law enforcement agencies'
13 ability to provide other public safety services to their communities. *See e.g., Woollard*, 712 F.3d
14 at 879-880 (recounting similar policing benefits).

15 According to the legislative history of California Penal Code § 26400, one of the purposes
16 of the bill (A.B. 1527) was to follow up A.B. 144 (Statutes of 2011), which made public open
17 carry of handguns a misdemeanor, by expanding the prohibition to long-guns in incorporated
18 cities. "The absence of a prohibition on 'open carry' of long guns has created an increase in
19 problematic instances of these guns carried in public, alarming unsuspecting individuals causing
20 issues for law enforcement. Open carry creates a potentially dangerous situation. In most cases
21 when a person is openly carrying a firearm, law enforcement is called to the scene with few
22 details other than one or more people are present at a location and are armed." (See DOJ 001050)
23 "In these tense situations, the slightest wrong move by the gun-carrier could be construed as
24 threatening by the responding officer, who may feel compelled to respond in a manner that could
25 be lethal. In this situation the practice of 'open carry' creates an unsafe environment for all
26 parties involved; the officer, the gun-carrying individual, and for any other individuals nearby as
27 well." (See DOJ 001050)
28

1 “Additionally, the increase in ‘open-carry’ calls placed to law enforcement has taxed
2 departments dealing with under-staffing and cutbacks due to the current fiscal climate in
3 California, preventing them from protecting the public in other ways.” (See DOJ 001051)

4 The opposite legal interpretation is less plausible. If anyone could create a “motion picture,
5 television or video production” or “entertainment event” merely by filming themselves in a public
6 place (using an object as small as a cell phone), with no meaningful limitation on the visibility or
7 timing of the firearms display, such an exception would swallow the general prohibition on open
8 carrying of weapons and be inconsistent with the California Legislature’s intent to minimize
9 potentially dangerous interactions in public.

10 **INTERROGATORY NO. 17:** State all facts supporting your interpretation of California
11 Penal Code §§ 26375 and 26405(r).

12 **RESPONSE TO INTERROGATORY NO. 17:**

13 Defendant Becerra incorporates by reference the above-stated general objections as though
14 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
15 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
16 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information
17 that is relevant to Plaintiff’s claims.

18 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
19 follows: Defendant Becerra has not issued an interpretation of California Penal Code §§ 26375
20 and 26405, subdivision (r). However, the California Department of Justice does possess
21 documents that are related to firearms generally. See and DOJ 0001282-DOJ 001312.

22 **INTERROGATORY NO. 18:** Describe in detail all means through which your
23 interpretation of California Penal Code §§ 26375 and 26405(r) has been relayed to municipalities
24 and local governments.

25 **RESPONSE TO INTERROGATORY NO. 18:**

26 Defendant Becerra incorporates by reference the above-stated general objections as though
27 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
28 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to

1 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
2 that is relevant to Plaintiff's claims.

3 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
4 follows: Defendant Becerra has not issued an interpretation of California Penal Code §§ 26375
5 and 26405(r). However, the California Department of Justice does possess documents that are
6 related to firearms generally. See and DOJ 0001282-DOJ 001312.

7 **INTERROGATORY NO. 19:** Identify all documents reflecting your interpretation of
8 California Penal Code §§ 26375 and 26405(r).

9 **RESPONSE TO INTERROGATORY NO. 19:**

10 Defendant Becerra incorporates by reference the above-stated general objections as though
11 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
12 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
13 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
14 that is relevant to Plaintiff's claims.

15 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
16 follows: Defendant Becerra has not issued an interpretation of California Penal Code §§ 26375
17 and 26405(r). Thus, Defendant Becerra is not aware of any documents that would be responsive
18 to this request. However, the California Department of Justice does possess documents that are
19 related to firearms generally. See and DOJ 0001282-DOJ 001312.

20 **INTERROGATORY NO. 20:** Identify all documents reflecting that you have conveyed
21 your interpretation of California Penal Code §§ 26375 and 26405(r).

22 **RESPONSE TO INTERROGATORY NO. 20:**

23 Defendant Becerra incorporates by reference the above-stated general objections as though
24 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
25 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
26 Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information
27 that is relevant to Plaintiff's claims.

1 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
2 follows: Defendant Becerra has not issued an interpretation of California Penal Code §§ 26375
3 and 26405(r). Thus, Defendant Becerra is not aware of any documents that would be responsive
4 to this request. However, the California Department of Justice does possess documents that are
5 related to firearms generally. See and DOJ 0001282-DOJ 001312.

6 **INTERROGATORY NO. 21:** Identify the types of events that qualify as “entertainment
7 events” under California Penal Code §§ 26375, 26405(r), and 25510.

8 **RESPONSE TO INTERROGATORY NO. 21:**

9 Defendant Becerra incorporates by reference the above-stated general objections as though
10 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is
11 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to
12 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information
13 that is relevant to Plaintiff’s claims.

14 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as
15 follows: Defendant Becerra has not issued an interpretation of the types of events that would
16 qualify as “entertainment events” under California Penal Code §§ 26375, 26405, subdivision (r),
17 and 25510. Thus, Defendant Becerra is not aware of any documents that would be responsive to
18 this request. However, the California Department of Justice does possess documents that are
19 related to firearms generally. See and DOJ 0001282-DOJ 001312.

20
21 ///

22
23 ///

24
25 ///

26
27 ///

1 Dated: October 23, 2020

Respectfully submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 ANTHONY R. HAKL
Supervising Deputy Attorney General

5 */s/ John W. Killeen*
6 JOHN W. KILLEEN
7 Deputy Attorney General
8 *Attorneys for Defendant Attorney General*
9 *Xavier Becerra*

10
11
12
13
14
15
16
17
18
19
20 SA2018100198
21 34524433.docx
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

s/ Gabrielle Bruckner
Gabrielle Bruckner